PROCEEDINGS

OF THE

NATIONAL CONGRESS

ON

UNIFORM DIVORCE LAWS.

ADJOURNED MEETING.

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HELD AT

Philadelphia, Pa., November 13, 1906.

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PROCEEDINGS OF THE ADJOURNED MEETING

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UNIFORM DIVORCE LAWS.

Philadelphia, Pa., November 13, 1906.

The National Congress on Uniform Divorce Laws, pursuant to adjournment, and in response to the call of the President, re-convened at Hotel Bellevue-Stratford at 10 o'clock, A. M., President SAMUEL W. PENNYPACKER, Governor of the Commonwealth of Pennsylvania, in the Chair.

The PRESIDENT: The Congress will now come to order. The proceedings will be opened with prayer by the Rev. William L. Worcester, D. D.

PRAYER BY DR. WORCESTER:

O God, our Heavenly Father, the author of our being, in whom exist in their essence and divine perfection all laws of useful and happy life, be with us, we pray, and bless our proceedings. Enlighten us by Thy Holy Spirit. Enlighten us to perceive that all wise and beneficent human law is but the application of the Divine law to the needs and conditions of men. Guide, we beseech Thee, the deliberations of this body, and grant that they may bear fruit in the blessing of many homes. Amen.

The PRESIDENT: The Mayor of the city, who was to have been with us and make an address of welcome on behalf of the city of Philadelphia, is unfortunately confined to his home by illness; but he has sent here to represent him Dr. Coplin, the head of the Department of Public Health and Charities, who will make that address in his behalf.

ADDRESS OF WELCOME BY DR. W. M. L. COPLIN:

Mr. President and Gentlemen of this Congress: The number of delegates representing this great country of ours should be welcomed by some one better fitted than a delegate from our Mayor. I come to you, however, from the sick room, bearing the warmest greeting to you all, and the assurance of the Mayor's sincere regret at his inability to be with you. A welcome to the city of Philadelphia must, at all times and on all occasions, be little more than superfluous. Our history is the history of the greatest republic that the world has ever known. Within our walls, which are God's open air, there was born all that we know of the elements of human freedom exemplified in this great country of ours. Our traditions are dear to every American heart, and the Philadelphian who does not feel proud of his city were worse off than the Roman who ignored the glory of his country. Now, to that city, that city of homes, which you gentlemen propose to guard, propose to formulate laws for the proper protection of, that city having a larger number of homes than any other city on God's footstool, I offer you, not simply on the part of the administration of the city, not simply on the part of the Department of Health and Charities, of which I have the honor to be the head, but on the part of all the people of the great city looking to your deliberations, looking to the results of the thought of leading men of the country for a proper solution of this most intricate problem—from one and all of these I bring you a most hearty welcome.

The city is now in a part of its beauty. A little earlier you would have seen the Park, you would have seen something of the public squares, probably brighter than they are now. But melancholy autumn has decked our woods with garlands of wondrous colors. Independence Hall stands as a treasure, beautiful as she will always be. Our buildings, our great University, our schools, our eleemosynary institutions, all of them creditable, I think, are all of them open to your investigation, for your study. If my Department or

any other Department of the city may aid anything, may co-operate in any way, you have but to call upon us.

In this city, in this staid, dignified, quiet, reserved Philadelphia, we have always welcomed conventions, conferences, legislative bodies, considering the great sociological problems of our race. If you may accomplish something for the good of the race in proportion to that of preceding Congresses—the Congress of the United States which met in this city, the congresses of medicine that have met in this city, the great congresses of the other learned professions, medicine and law, if from this room, from this meeting, you, gentlemen, can send forth helpful words and helpful action to the people who are looking to you, not only from our city but from our country, you will leave behind something to enhance the greatness of Philadelphia, and something to endear you to the city.

And now, gentlemen, again, on the part of his Honor, the Mayor, on the part of the city of Philadelphia, I offer you its freedom. I offer you its welcome, always sincere and always heartfelt, and I bid you God speed in the noble work that you are doing.

The PRESIDENT: Ladies and Gentlemen: The pleasing address which has just been made by Dr. Coplin leaves very little for me to do in this direction, and I need detain you but a few minutes. It is a great pleasure to me, as the Chief Executive of the Commonwealth, on its behalf to give you greeting, and to welcome you to its chief city. You have come from all over the United States to the classic ground of America; and I hope that in addition to the important duties which you will perform you will have a pleasant and agreeable relaxation. While you are here you want to go to Independence Hall. That, I have no doubt, some of you have already done. In addition to going to Independence Hall, if you have the time, you ought to make a visit to Valley Forge, which is within easy reach of the city, and to see there the Park which has been established by the Commonwealth of Pennsylvania, where it has purchased some four hundred acres, including the intrenchments; and when you have done these two things you will depart with a proper idea of the surroundings which you can meet here

You have assembled to perform a most important duty. Those who look upon the subject of divorce from the point of view alone of its effect upon the parties that have been so divorced take a very narrow view of what it means. The effect is upon the whole community. Every man and woman who enters into the relation of marriage, when he or she sees the facility with which divorces are obtained, while the promise is made to live together richer or poorer, for better or for worse, nevertheless knows in his or her mind that if the husband becomes poorer or the wife becomes worse, here is

an easy opportunity afforded for escape. And we all know that when the mind is turned in a certain direction, it is so easy for the steps to follow in that pathway. You have approached the subject not in any narrow way, but with a prompt and with a liberal spirit. You have not undertaken the impossible. What you have endeavored to do is to establish over the United States, in so far as you may be able to do it, a uniformity of treatment of the subject; and if you can accomplish it, you will have done a work of the utmost utility and benefit to mankind. In your labors and deliberations at Washington you met the general approval of the community. Much more than that, you come here to-day with a certain assurance from your presence and from the approval with which you have met, of the final success of your efforts. In that Congress, after having deliberated over the subject and reached your conclusions, you appointed a Committee to put into definite shape your thought. That Committee is now ready to report, and their conclusions you will have before you for your consideration. I need do nothing more therefore than to present the subject to you and go ahead with the proceedings of the Congress.

The Secretary will call the roll.

The Secretary thereupon called the roll, and the following delegates responded:

(For the purpose of convenience, the names of all the delegates who attended this meeting are here given, whether they responded to this roll call, or arrived later):

Colorado:
Hon. James D. Husted.

Connecticut:
Hon. Talcott H. Russell.
Hon. Walter E. Coe.

Delaware:
Hon. Benjamin H. Nields.
Hon. Robert H. Richards.
Hon. Preston Lea, Governor.

District of Columbia:
Hon. Aldis B. Browne.

Illinois:
Hon. John C. Richberg.

Maine:
Hon. Charles F. Libby.
Hon. Hannibal E. Hamlin.

Massachusetts:
Rev. Dr. Samuel W. Dike.
Dean James Barr Ames.

Michigan:
Rev. Caroline Bartlett Crane.
Hon. Adolph Sloman.

Minnesota:
Rev. A. J. D. Haupt.

Missouri:
Hon. Seneca N. Taylor.
Hon. Percy Werner.

New Jersey:
Rev. Dr. Henry Collin Minton.
Vice-Chancellor John R. Emery.

New Mexico:
Hon. Francis Tracy Tobin.

New York:
Hon. Charles Thaddeus Terry.

North Carolina:
Hon. F. H. Busbee.

North Dakota:
Bishop John Shanley.

Ohio:
Hon. Frank H. Kerr.

Pennsylvania:
Hon. C. La Rue Munson.
Hon. Walter George Smith.
Hon. William H. Staake.
Hon. Samuel W. Pennypacker, Governor.

Rhode Island:
Hon. Amasa M. Eaton.

South Dakota:
H. K. Warren, M. D.

Utah:
Mrs. Rachel Siegel.

Wisconsin:
Hon. Ernest Merton.

The PRESIDENT: The Secretary has certain announcements to make.

JUDGE WILLIAM H. STAAKE, Secretary: From the responses I have had, I think there will be 28 States represented at this meeting of the Congress.

I desire to make several announcements; first of all, on behalf of the members of the New Century Club, I have the following invitation:

"November 9, 1906.

"Hon. W. H. Staake, Secy.:

"The New Century Club extends to the Women Delegates and to the wives and daughters of Delegates to the Divorce Congress the privileges of this Club House, 124 South 12th Street, during their stay in the City, and also a special invitation to be present at a Club meeting on Wednesday afternoon, November 14th, at three o'clock, when Professor S. H. Clark, of the University of Chicago, will give an address on the "Spirit of Literature." Tea will be served from four to five.

EMMA BLAKISTON,
President."

I also have an invitation to the members of the Congress from the Law Association of Philadelphia, as follows:

"Philadelphia, Oct. 15th, 1906.

"Hon. William H. Staake, Court of Common Pleas No. 5, City Hall, Philadelphia:

"My Dear Sir: At a meeting of the Library Committtee of the Law Association held on Saturday last, the following resolution was passed, of which I was directed by the Committee to send you a copy:

"Resolved, That the members of 'The Divorce Congress,' about to meet in Philadelphia on Nov. 13th, and their friends accompanying them, are invited to use the books of the Association in the Library Room 600, City Hall, during their stay in the City; and that Hon. Wm. Staake is requested to convey this invitation to the 'Divorce Congress.'

Yours respectfully,

THOMAS S. GATES,
Secretary."

I desire to say that the Law Library is very well worth a visit. There is a very valuable collection of books, and a valuable collection of portraits. Among others, there is the portrait of Chief Justice Marshall that many of you are familiar with, which has been copied and sent all over the nation. The original picture is in our Law Library, a treasure belonging to our Law Association. The rooms of the Association are No. 600, situated on the north corridor of the City Hall.

I also have an invitation on behalf of the Trustees of the University of Pennsylvania and the Faculty of the Law Department, as follows:

"Dear Sir: The Trustees of the University and the Faculty of the Law Department desire to extend through you to the delegates to the Divorce Congress, meeting on November 13th at the Bellevue-Stratford, a very cordial invitation to inspect the Law School Building, and to use the Biddle Law Library during their stay in the City.

Very truly yours,

W. DRAPER LEWIS,
Dean of the Law. Dept.

"Hon. William H. Staake, Sec. Divorce Congress, Court of Common Pleas, City Hall, Phila."

In connection with this invitation, I would say that in a room in the Law School Building is a valuable collection of historical data belonging to the Pennsylvania Bar Association. Some of you who are familiar with the reports of that Association may have noted the catalogue in the annual reports of the material in the way of portraits and of manuscripts of one kind or another that are there. The Pennsylvania Bar Association takes considerable pride in its possessions, which are housed in the Law School Building.

And I have an invitation from the Secretary of the Committee on Legal Biography of the Pennsylvania Bar Association inviting you to inspect this collection, as follows:

"November 12, 1906.

"My Dear Judge: Please extend an invitation to the members of your Divorce Congress Committee to visit the room of the Pa. Bar Association's historical collection in the Law School Building of the University of Pennsylvania, Cor. 34th and Chestnut Sts.

"Take 43rd and Chester Ave. cars on Walnut going west, get off at 34th and Chestnut. Room open from 10 to 5.

Yours truly,

T. ELLIOTT PATTERSON.

"Hon. William H. Staake."

In addition, I am directed by the President and Board of Governors of the Lawyers' Club, of Philadelphia, having its Club House in the immediate neighborhood, namely, 1507 Walnut street, to extend to one and all of the delegates a very cordial invitation to make use of the Club House during their stay here; all the privileges of membership of the Club having been formally extended to you by resolution of the Board of Governors; and the Club would be very glad, indeed, to extend its hospitality and courtesies to the members of this Association.

I would further announce that there are on the platform bound copies of the proceedings of the Divorce Congress at Washington, for distribution, together with copies of the statute as finally amended, and as it will be presented to-day; also copies of the additional statutes which were approved by the Committee on Resolutions, some copies of the Act of Assembly of the Commonwealth of Pennsylvania, to which this Congress owes its origin, which some of you might like to have as a part of the history of this Congress. There is also a list of the Committees and slip copies of the resolutions adopted by this Congress at Washington; and also copies of the rules of order.

By vote of the Congress at Washington, the Territories were invited to send delegates to this Congress. At the time the rules of order were adopted the territories had not been included. Their delegates had a voice, but no vote in the Congress. That was afterwards amended by a special vote of the Congress at Washington, giving the delegates from the Territories the right to vote.

I would further announce the receipt of a number of letters from delegates who are unable to attend.

The PRESIDENT: Has the Committee on Credentials any report to make?

WALTER E. COE, Chairman: I have the honor to submit the following report from your Committee on Credentials:

"Philadelphia, Pa., Nov. 13th, 1906.

To the Congress on Uniform Divorce Law:

Your Committee on Credentials begs leave to report that since the last meeting of this Congress at Washington, February 20th, last, the following delegates have been duly accredited to this Congress, and are entitled to seats and votes therein.

Colorado:

Hon. James D. Husted, Denver, Colorado, is to be added to the delegates from this State.

Michigan:

Hon. Adolph Sloman, Detroit, is to be added to the delegates from this State.

Missouri:

Hon. Percy Werner, St. Louis, is to be added to the delegates from this State.

Respectfully submitted,
WALTER E. COE,
for Committee on Credentials."

The PRESIDENT: You have heard the report of the Committee; what action shall be taken upon it?

CHARLES F. LIBBY, Maine: I move that the report be accepted. Duly seconded and agreed to.

The SECRETARY: I would state that I have received from Dr. Roberts, the Secretary of the Inter-Church Conference on Marriage and Divorce a list of representatives of that body who have been delegated to attend the sessions of the Congress. It may be remembered that at Washington, by a vote of the Congress, we formally received a delegation from the Inter-Church Conference, and that the representatives of that Congress were accorded a voice in our proceedings, and requested to be seated with us. The list is as follows:

Rt. Rev. W. C. Doane, D. D., Chairman, Bishop Protestant Episcopal Church.

Rev. W. H. Roberts, D. D., Secretary, Presbyterian Church, U. S. A.

Rev. E. P. Johnson, D. D., Reformed Church in America.

Rev. Charles A. Dickey, D. D., Presbyterian Church, U. S. A.

Rev. James I. Good, D. D., Reformed Church, U. S. A.

Rev. A. W. Wilson, D. D., Bishop Methodist Episcopal Church.

Rev. E. H. Delk, D. D., Evangelical Lutheran Church.

Rev. J. C. Scouller, D. D., United Presbyterian Church.
Rev. T. P. Stevenson, D. D., Reformed Presbyterian Church.
Rev. William L. Worcester, Church of the New Jerusalem.
Rev. Henry G. Weston, D. D., Baptist Churches.
Rev. S. W. Dike, LL. D., Congregational Church.
Rev. Edward G. Andrews, D. D., Bishop Methodist Episcopal Church.
Rev. R. W. Jopling, Presbyterian Church, South.
John E. Parsons, Esq., Presbyterian Church, U. S. A.
Francis L. Stetson, Esq., Protestant Episcopal Church.
Hon. P. S. Grosscup, Evangelical Lutheran Church.
Hon. Wm. M. Lanning, Presbyterian Church, U. S. A.

The PRESIDENT: Is there any wish that the former invitation to the delegates from the Inter-Church Conference be renewed?

SENECA N. TAYLOR, Missouri: I move that the invitation be renewed, and that the delegates named be requested to take seats with us, and take part in our deliberations.

Duly seconded by Rev. Dr. Haupt of Minnesota, and unanimously carried.

The SECRETARY: I would suggest that in view of the fact that the proceedings of the Congress at Washington are in print, some member make a formal motion that the reading of any minutes of such proceedings be dispensed with at this session.

AMASA M. EATON, Rhode Island: I move that the reading of the minutes be dispensed with.

Duly seconded, and carried.

The PRESIDENT: Has the Secretary any other announcement to make?

The SECRETARY: I regret to be obliged to perform the duty of announcing that since the organization and meeting of this Congress at Washington, February 19 to 22, 1906, the Congress has lost three of its delegates, who were present at that time: Hon. R. W. Miller, of Kentucky, Hon. Joseph W. Fellows, Chairman of the delegates from New Hampshire, and Hon. Walter S. Logan, Chairman of the delegates from New York, have entered into their eternal rest.

I move you that the Secretary be authorized to note upon the minutes of the proceedings of this Congress the deaths of these delegates, and our sense of the loss which the Congress and their respective commonwealths have thereby sustained.

REV. DR. A. J. D. HAUPT, Minnesota: I second the Secretary's motion.

Unanimously adopted.

The SECRETARY: These are the only deaths that have been communicated to the Secretary; if there have been any others, they should be reported as early as possible.

The PRESIDENT: Is the Committee on Resolutions ready to report?

WALTER GEORGE SMITH, Chairman, Pennsylvania: On behalf of the Committee on Resolutions, I have the honor to submit the following report:

REPORT OF THE COMMITTEE ON RESOLUTIONS.

To the Congress on Uniform Divorce Laws:

The Committee on Resolutions respectfully reports:

At the meeting of the Congress, held on February 22nd, 1906, in the city of Washington, on motion of John C. Richberg, of Illinois, the following resolutions were adopted:

Resolved 1. That the resolutions adopted by this Congress on the subject of divorce be referred to the Committee on Resolutions, with instructions to embody them in a statute to be submitted eventually as a uniform statute on the law of divorce to all of the states.

2. That when this duty shall have been performed, the Chairman of the Committee shall communicate the fact to the Governor of Pennsylvania, the President of this Congress, with the request that he call the Congress together to consider the proposed statute.

3. That copies of the proposed statute be printed and distributed to each delegate to this Congress at least thirty days before the date set for its re-convening, as herein provided for.

4. That the resolutions adopted by this Congress, on the subject of divorce, be printed, without delay, and distributed to each delegate to the Congress, and the delegates be requested to bring these resolutions to the attention of the Governors of the different states and territories of the United States, that they may be submitted to the legislatures, and to the Commissioners of the District of Columbia, and that copies be sent to the President of the United States for such action as he may deem proper. (Proceedings of the Congress, p. 199.)

In pursuance of these resolutions, the Committee caused printed copies of the various resolutions on the subject of divorce to be sent to the Governors of the different states and territories, to the Com-

missioners of the District of Columbia and to the President of the United States.

The personnel of the Committee was changed by the addition of the President, Vice Presidents and Secretary of the Congress (Proceedings of Congress, p. 209), and by the appointment of John C. Richberg, of Illinois, and Seneca N. Taylor, of Missouri, in the places of Judge J. F. Ailshie, of Idaho, and Hon. J. N. Gillett, of California, the last named gentlemen not having been able to attend the meetings of the Committee.

In accordance with its instructions, the Committee drafted a form of statute embodying the principles formulated by the Congress on the subject of annulment of marriage and divorce, and communicated the fact to the President of the Congress, with the request that he call the Congress together to consider it. The President, thereupon, called this meeting of the Congress. A printed copy of the proposed statute was mailed to each member thirty days prior to the date fixed for the meeting.

At a meeting of the Committee held on the 10th inst. to consider any suggestions relating to the proposed statute, it was decided that the draft should be changed in certain particulars, so as to improve the phraseology, but no changes were made in any matter of substance from the copy as sent to each member of the Congress, excepting by striking out that portion of Section 3, subsection d, which provided that "such indignities to the person, threats and acts of abuse, as to render the condition of the other party intolerable and life burdensome, and to force such party to separate from the other and to live apart" should be a cause for absolute divorce. The Committee, on final consideration, were of opinion that this cause, though recognized in some states, was not contemplated by the resolution of the Congress enumerating the causes which in its judgment should not be increased. The Committee felt warranted, however, in retaining this as a cause of divorce *a mensa*.

The Committee also decided to strike out Section 10 of Article VII, which provided for methods of personal service and service by publication, believing that it would lead to confusion and defeat the purpose of obtaining uniformity of the proposed statute, should attempts be made to regulate the practice of the different states, other than to require substantial conformity with sections 7, 8, 9 and 10, providing for the manner in which jurisdiction should be obtained. Copies of the revised statute will be distributed to the members of the Congress as it has been finally agreed upon, and is submitted herewith.

The Committee has prepared, and submits also as a part of this report, separate statutes prepared in accordance with the resolution (Proceedings, p. 222) of Mr. Pollard, of Virginia, providing for the

annual collection of statistics on the subject of marriage and of divorce. The various statistics required by these latter Acts are the same as are now being collected by the United States Government in pursuance of an Act of Congress.

The Committee submits an Act prohibiting solicitation in divorce cases and prescribing penalties therefor.

It will be observed that the act relating to Annulment of Marriage and Divorce, while complete in its enumeration of causes for Annulment, for Divorce from the Bonds of Matrimony, and for Divorce from Bed and Board, and in its general provisions relating to the legitimacy of children, and the effect of Foreign Decrees, deals only with such matters relating to practice and procedure as are necessary to embody the resolutions of the Congress. In the first draft of the proposed statute submitted by the sub-committee to the general Committee at a meeting held in St. Paul, Minnesota, on September 1, 1906, complete and elaborate provisions were inserted to cover all questions relating to these important subjects, but after careful consideration, the Committee decided that it would not be practicable to secure the passage of an uniform statute if these provisions were retained, by reason of the probable disinclination of many of the states to change the existing laws governing procedure. It was deemed unimportant that there should be uniformity on this subject, if the general principles adopted by the Congress were made effective in the different jurisdictions.

The Congress, while expressing a desire that the causes for divorce enumerated in its resolutions should be decreased rather than increased, recognizes the varying opinions of the different communities represented in the State Legislatures as existing facts, and leaves to each state to decide what these causes shall be; the causes enumerated in the resolutions and the statute are now the law in forty states of the Union. While it is too much to hope in the present state of public opinion that causes will be materially decreased in many of the States, it is believed that the principle that no state should extend its jurisdiction beyond cases where one of its own residents is a party, will be universally recognized. If this principle is carried out with the restrictions relating to service provided by the statute, a prolific cause of scandal and injustice will be removed. Probably the most difficult problem that the Committee has attempted to solve is the effect to be given to foreign decrees. It found the recognition of the principle of comity too firmly imbedded in the jurisprudence of nearly all of the states to be ignored, and it was necessary to recognize the American principle of separate domicil of the wife for purposes of divorce as too firmly established to be disturbed. Under these circumstances, it decided to draft the general provision covered by Sections 7 to 10 of the Act conferring juris-

diction, and then to require that full faith and credit be given to all foreign decrees where jurisdiction was obtained substantially in conformity with them. The adoption of this Act will tend to abate the scandal of migratory divorces, it will fix the status of all divorced persons on the same plane in all of the States, and will introduce such changes in the administration of the divorce laws as will reduce to a minimum the opportunities for fraud and collusion.

Objection has been made to those provisions of the Act requiring public hearings, on the ground of injury to public morals, but the Committee are of opinion that the decision of the Congress is based upon sound policy, and the advantages of a public and open hearing in the presence of the Court outweigh any of the dangers that have been suggested.

It will be found that no extreme change will be made in any of the existing laws by the adoption of this statute, excepting by the extension to some of them of the principle of divorce from bed and board, the argument for which has been fully set forth in the debates and accepted by the Congress. (Proceedings p. 105-121.)

The Committee feels that the members of the Congress and the community at large are to be congratulated upon the substantial unanimity that has marked its conclusions. It could not be expected, in view of the widely divergent opinions held by the masses of the people, as well as by those whose individual conclusions so largely affect them, that any change would be made looking towards the total abolition of divorce; but it is gratifying and encouraging to find that the public mind is awake to the many evils engendered by the lax and unphilosophic system prevailing in many of the states, and there can be no doubt that the intelligent efforts of the Congress to abate them will meet with an earnest support.

WALTER GEORGE SMITH,
Chairman.

Philadelphia, Nov. 13, 1906."

The PRESIDENT: You have heard the report of the Committee on Resolutions; a motion will now be in order to accept that report.

AMASA M. EATON, Rhode Island: I move that the report be received, and adopted.

The motion being duly seconded, was agreed to.

Following is the statute reported:

AN ACT REGULATING ANNULMENT OF MARRIAGE AND DIVORCE.

CHAPTER I.—JURISDICTIONAL PROVISIONS.

Article I.—Annulment of Marriage.

Section 1. Causes for Annulment.

A marriage may be annulled for any of the following causes existing at the time of the marriage:

Note.—See Summary of Divorce Laws, Idaho, p. 45.

a. Incurable physical impotency, or incapacity for copulation, at the suit of either party: Provided, That the party making the application was ignorant of such impotency or incapacity at the time of the marriage.

b. Consanguinity or affinity according to the table of degrees established by law, at the suit of either party; but when any such marriage shall not have been annulled during the lifetime of the parties the validity thereof shall not be inquired into after the death of either party.

c. When such marriage was contracted while either of the parties thereto had a husband or wife living, at the suit of either party.

d. Fraud, force or coercion, at the suit of the innocent and injured party, unless the marriage has been confirmed by the acts of the injured party.

e. Insanity of either party, at the suit of the other, or at the suit of the committee of the lunatic, or of the lunatic on regaining reason, unless such lunatic, after regaining reason, has confirmed the marriage: Provided, That where the party compos mentis is the applicant, such party shall have been ignorant of the other's insanity at the time of the marriage, and shall not have confirmed it subsequent to the lunatic's regaining reason

f. At the suit of the wife when she was under the age of sixteen years at the time of the marriage unless such marriage be confirmed by her after arriving at such age.

g. At the suit of the husband when he was under the age of eighteen at the time of the marriage, unless such marriage be confirmed by him after arriving at such age.

Note.—The foregoing causes for annulment of marriage, except "f" and "g," are, *in extenso*, the causes suggested by Par. A. of Resolution 6, adopted by the Congress on Uniform Divorce Laws, February 19-22, 1906, as being in fact recognized by a large number of the states of the Union. But each state is at liberty to reduce or increase the same, or change the age of consent, as its citizens may deem advisable.

Article II.—Divorce.

Section 2. Kinds of.

Divorce shall be of two kinds:

a. Divorce from the bonds of matrimony, or divorce *a vinculo matrimonii.*

b. Divorce from bed and board, or divorce *a mensa et thoro.*

Article III.—Divorce *a Vinculo.*

Section 3. Causes for.

The causes for divorce from the bonds of matrimony shall be:

a. Adultery.

b. Bigamy, at the suit of the innocent and injured party to the first marriage.

c. Conviction and sentence for crime by a competent court having jurisdiction, followed by a continuous imprisonment for at least two years, or in the case of indeterminate sentence, for at least one year: Provided, That such conviction has been the result of trial in some one of the states of the United States, or in a Federal Court, or in some one of the territories, possessions or courts subject to the jurisdiction of the United States, or in some foreign country granting a trial by jury, followed by an equally long term of imprisonment.

d. Extreme cruelty, on the part of either husband or wife, such as to endanger the life or health of the other party and render cohabitation unsafe.

Note.—The foregoing causes for divorce *a vinculo* are, *in extenso*, the causes suggested by Par. "B" of Resolution 6, adopted by the Congress on Uniform Divorce Laws, February 19-22, 1906, as being in fact recognized by a large number of the states of the Union, but each state is at liberty to reduce or increase the same as its citizens may deem advisable.

e. Wilful desertion for two years.

f. Habitual drunkenness for two years.

Article IV.—Divorce *a Mensa.*

Section 4. Causes for.

The causes for divorce from bed and board shall be:

a. Adultery.

b. Bigamy, at the suit of the innocent and injured party to the first marriage.

c. Conviction and sentence for crime by a competent court having jurisdiction, followed by a continuous imprisonment for at least two years, or in the case of indeterminate sentence, for at least one year:

Provided, That such conviction has been the result of trial in some one of the states of the United States, or in a Federal Court, or in some one of the territories, possessions or courts subject to the jurisdiction of the United States, or in some foreign country granting a trial by jury, followed by an equally long term of imprisonment.

d. Extreme cruelty, on the part of either husband or wife, such as to endanger the life or health of the other party and render cohabitation unsafe; or such indignities, threats or acts of abuse, as to render the condition of the other party intolerable and life burdensome, and to force such party to separate from the other and to live apart.

e. Wilful desertion for two years.

f. Habitual drunkenness for two years.

g. Hopeless insanity of the husband.

Note.—The foregoing causes for divorce *a mensa*, are, *in extenso*, the causes suggested by Par. "C" of Resolution 6, adopted by the Congress on Uniform Divorce Laws, February 19, 22, 1906, as being in fact recognized by a large number of the states of the Union, but each state is at liberty to reduce or increase the same as its citizens may deem advisable.

Article V.—Bars to Relief.

Section 5. When Decree shall be denied.

No decree for divorce shall be granted if it appears to the satisfaction of the court that the suit has been brought by collusion, or that the plaintiff has procured or connived at the offense charged, or has condoned it, or has been guilty of adultery not condoned.

Article VI.—Jurisdiction.

Section 6. In What Courts.

The ..... court of this state shall have and entertain jurisdiction of all actions for annulment of marriage, or for divorce.

Section 7. By Personal Service in Actions for Annulment.

For purposes of annulment of marriage, jurisdiction may be acquired by personal service upon the defendant within this state when either party is a bona fide resident of this state at the time of the commencement of the action.

Section 8. By Personal Service in Actions for Divorce.

For purposes of divorce, either absolute or from bed and board, jurisdiction may be acquired by personal service upon the defendant within this state, under the following conditions:

a. When, at the time the cause of action arose, either party was a bona fide resident of this state, and has continued so to be down to

the time of the commencement of the action; except that no action for absolute divorce shall be commenced for any cause other than adultery or bigamy, unless one of the parties has been for the two years next preceding the commencement of the action a bona fide resident of this state.

b. When, since the cause of action arose, either party has become, and for at least two years next preceding the commencement of the action has continued to be, a bona fide resident of this state: Provided, The cause of action alleged was recognized in the jurisdiction in which such party resided at the time the cause of action arose, as a ground for the same relief asked for in the action in this state.

Section 9. By Publication in Actions for Annulment.

When the defendant cannot be served personally within this State, and when at the time of the commencement of the action the plaintiff is a bona fide resident of this state, jurisdiction for the purpose of annulment of marriage may be acquired by publication, to be followed, where practicable, by service upon or notice to the defendant without this State, or, by additional substituted service upon the defendant within this state, as prescribed by law.

Section 10. By Publication in Actions for Divorce.

When the defendant cannot be served personally within this state, and when at the time of the commencement of the action the plaintiff is a bona fide resident of this State, jurisdiction for the purpose of divorce, whether absolute or from bed or board, may be acquired by publication, to be followed, where practicable, by service upon or notice to the defendant without this State, or by additional substituted service upon the defendant within this State as prescribed by law, under the following conditions:

a. When, at the time the cause of action arose, the plaintiff was a bona fide resident of this state, and has continued so to be down to the time of the commencement of the action; except that no action for absolute divorce shall be commenced for any cause other than adultery or bigamy, unless the plaintiff has been for the two years next preceding the commencement of the action a bona fide resident of this state.

b. When, since the cause of action arose, the plaintiff has become, and for at least two years next preceding the commencement of the action has continued to be a bona fide resident of this state: Provided, The cause of action alleged was recognized in the jurisdiction in which the plaintiff resided at the time the cause of action arose, as a ground for the same relief asked for in the action in this state.

Section 11. Particeps Criminis may be made a Party.

Any one charged as a particeps criminis shall be made a party, upon his or her application to the court, subject to such terms and conditions as the court may prescribe.

Section 12. Hearings.

All hearings and trials shall be had before the court, and not before a master, referee, or any other delegated representative; and shall in all cases be public.

Section 13. Attorney, Appointment of by Court.

In all uncontested cases, and in any other case where the court may deem it necessary or proper, a disinterested attorney may be assigned by the court actively to defend the case.

Article VIII.—Evidence.

Section 14. Proof Required.

No decree for annulment of marriage, or for divorce shall be granted unless the cause is shown by affirmative proof aside from any admissions on the part of the defendant.

Section 15. Impounding of Record and Evidence.

No record or evidence in any case shall be impounded, or access thereto refused.

Article IX.—Decrees.

Section 16. Rule for Decree *Nisi.*

If after hearing of any cause, or after a jury trial resulting in a verdict for the plaintiff, the court shall be of opinion that the plaintiff is entitled to a decree annulling the marriage, or to a decree for divorce from the bonds of matrimony, a decree *nisi* shall be entered.

Section 17. Final Decrees, Entry of.

A decree nisi shall become absolute after the expiration of one year from the entry thereof, unless appealed from or proceedings for review are pending, or the court before the expiration of said period for sufficient cause, upon its own motion, or upon the application of any party, whether interested or not, otherwise orders; and at the expiration of one year such final and absolute decree shall then be entered upon application to the court by the plaintiff, unless prior to that time cause be shown to the contrary.

Section 18. Decree *a Mensa*, Terms of.

In all cases of divorce from bed and board for any of the causes specified in Section 4 of this act, the court may decree a separation forever thereafter, or for a limited time, as shall seem just and reasonable, with a provision that in case of a reconciliation at any time thereafter, the parties may apply for a revocation or suspension of the decree; and upon such application the court shall make such order as may be just and reasonable.

Section 19. Former Name of Wife.

The court upon granting a divorce from the bonds of matrimony to a woman may allow her to resume her maiden name, or the name of a former deceased husband.

Article X.—Appeals.

Section 20. From What Decrees.

Appeals or proceedings for review may be taken only from decrees *nisi*, either for annulment of the marriage, or for divorce, whether from the bonds of matrimony or from bed and board, and not from final decrees, unless objection to granting the same be made as provided by Section 17 of this act.

Section 21. From Orders for Permanent Alimony, and Orders Relative to Children.

Appeals or proceedings for review may also be taken from all orders for payment of permanent alimony and from all orders relative to the care, custody and maintenance of children.

CHAPTER III.—GENERAL PROVISIONS.

Article XI.—Children.

Section 22. Legitimacy of.

a. In an action brought by the wife, the legitimacy of any child born or begotten before the commencement of the action shall not be affected.

b. In an action brought by the husband, the legitimacy of any child born or begotten before the commission of the offense charged shall not be affected; but the legitimacy of any other child of the wife may be determined as one of the issues of the action. All children begotten before the commencement of the action shall be presumed to be legitimate.

Article XII.—Foreign Decrees.

Section 23. Effect of.

Full faith and credit shall be given in all the courts of this state to a decree of annulment of marriage or divorce by a court of competent jurisdiction in another state, territory or possession of the United States when the jurisdiction of such court was obtained in the manner and in substantial conformity with the conditions prescribed in sections 7, 8, 9 and 10 of this act. Nothing herein contained shall be construed to limit the power of any court to give such effect to a decree of annulment or divorce by a court of a foreign country as may be justified by the rules of international comity: Provided, That if any inhabitant of this state shall go into another state, territory or country in order to obtain a decree of divorce for a cause which occurred while the parties reside in this State, or for a cause which is not ground for divorce under the laws of this state, a decree so obtained shall be of no force or effect in this state.

Article XIII.—Repeals.

Section 24. Repealing Clause.

The following acts of Assembly and parts of acts, viz: .....

.....

and all other acts and parts of acts of Assembly of this state, general, special or local, appertaining to the subject matter covered by this act, be and the same are hereby repealed: Provided, That nothing in this act contained shall affect or apply to any actions for annul ment of marriage, or for divorce, now pending.

Section 25. When Act shall take Effect.

This act shall take effect on the ..... day of ....., A. D. .....

The PRESIDENT: The proposed statute is now before the Congress.

JOHN C. RICHBERG, Illinois: In view of the fact that the Committee on Resolutions found it necessary at its meeting at St. Paul, to have an adjourned session of two meetings, and deemed it advisable, as the Chairman has reported, to make certain modifications in the proposed statute, and in view of the fact that some of the delegates may not have fully considered the report as originally sent out, I think, perhaps it would be advisable that the consideration of the proposed statute, or the adoption of it, be postponed until the afternoon session. Therefore, to give an opportunity for the delegates who have read the proposed statute, but who certainly have not read the modifications, nor considered the effect such modifications might have on the different sections, I move you that the consideration of the proposed statute be postponed until the afternoon session by this Congress.

Duly seconded.

TALCOTT H. RUSSELL, Connecticut: It seems to me undesirable to waste the morning without doing anything. Some of us are here at considerable expense and sacrifice of our own interests, and we ought to proceed and do something this morning. If the statute were to be adopted in lump, I do not think it would be in order or proper to take it up at this time, and the motion made by my friend would be wise. But if it is to be read section by section, and adopted section by section, I see no necessity for postponement. We can all understand the statute thoroughly and the changes made therein, if it is read.

SENECA N. TAYLOR, Missouri: It is quite possible that other delegates are on their way, and will reach here before the afternoon session. Inasmuch as there will probably be some discussion on

various sections, although I do not believe there will be very much on the report, I think it would be wise to adopt the resolution of the gentlemen from Illinois, so that all who attend will have the advantage of whatever discussion may arise.

The question being upon the motion to postpone, it was unanimously carried.

The PRESIDENT: What is your further pleasure, gentlemen?

CHARLES THADDEUS TERRY, New York: I desire to ask whether any changes or proposed changes have been made in the code since the copies were sent out to us by the Secretary of this Congress.

WALTER GEORGE SMITH, Chairman, Pennsylvania: My reply to the gentleman from New York is explained in the report. The copies of the proposed statute are all now in the hands of the members, or on the platform. Whatever changes there are are merely changes in the phraseology, not in substance.

CHARLES THADDEUS TERRY, New York: Do I understand the Chairman of the Committee on Resolutions that the proposed changes are in printed form on the platform?

WALTER GEORGE SMITH, Pennsylvania: They are in printed form on the platform, not in the neat condition in which it might be desirable to have them. The type was set up and is kept standing and corrections have been made in red ink; but in view of the possibility of other changes in phraseology by the Congress itself, and the very short time intervening between the session of the Committee on Resolutions and the opening of the Congress, it was not deemed advisable to reprint the entire statute. Therefore the copies are corrected, as I have just said, partly in red ink and partly in print.

CHARLES THADDEUS TERRY, New York: I suggest that it may save some time—bearing in mind always the fact that we now adjourn the consideration of the proposed statute until this afternoon session—if the Chairman of the Committee on Resolutions would refer as briefly as time will permit to the changes suggested by the Committee since we received these drafts; and, if I might also voice the thoughts of several other delegates, if the Chairman would refer again a little more particularly to what was touched on in his report—with reference to the causes enumerated in this statute which were not embraced in the resolutions of the Congress. I speak, perhaps, more particularly for myself, though also I think for other delegates, in saying that some time might be profitably spent in obtaining further information with reference to that passage.

The PRESIDENT: That seems to be a very proper suggestion, and I have no doubt the Chairman of the Committee will cheerfully comply with it.

WALTER GEORGE SMITH, Pennsylvania: With great pleasure and satisfaction. If the delegates will now turn first to page 2, and look at paragraph c of Section 1, they will observe that the word "former" before "husband" in the next to the last line of that section has been stricken out. That is merely for the sake of clearness, and obviously makes no change in the meaning of the paragraph. Turn next to page 3, and you will find in paragraph e the word "subsequently" changed to "subsequent"—being merely a grammatical change.

On page 4 the note was stricken out, because in the final draft of the statute it was considered unnecessary. We now come to the bottom of page 4, where there is the one substantial change that my friend from New York I think had in mind when he made reference to the report of the Committee. Paragraph d, as it was originally drafted, was intended to conform to the resolution of the Congress enumerating the causes of divorce, which you will find upon pages 19 and 20. You will find the fourth cause for divorce *a vinculo* given as intolerable cruelty. The Committee, when it drafted paragraph d, had in mind that extreme cruelty might be construed by the Court as covered by the facts where indignities to the person appeared, or threats and acts of abuse, coupled with circumstances such as to render the condition of the other party intolerable and life burdensome. The statute of Pennsylvania which the draftsman had in mind has that as one of the causes of divorce; but it is enumerated in the statute as a separate cause. And the Congress, it will be observed—referring to page 19—very carefully handled this matter of causes so as not to give the idea that this Congress recommended any addition to the causes that are now recognized in the great majority of the States of the Union; as the report of the Committee has explained to you, the causes enumerated being recognized in forty of the States of the Union. This the Congress has stated in this resolution:

6. While the following causes for annulment of the marriage contract, for divorce from the bonds of matrimony, and for legal separation or divorce *a mensa* seem to be in accordance with the legislation of a large number of American states, this Congress, desiring to see the number of causes reduced rather than increased, recommends that no additional causes should be recognized in any state; and in those states where causes are restricted, no change is called for.

Now, if the Committee apprehended correctly the sentiment of this Congress, its thought was that we did not intend to dictate to any State any standard for them to adopt with regard to causes; but recognizing the common apprehension of what was right on the part of the majority of the community, each legislature would be left to enumerate such causes as that community thought should be put upon their statute books. With that in our minds, obviously the Committee had no right to add any additional cause. It was not the intention of the draftsman of this section to add an additional cause. He thought, and the Committee following on, at first thought that the term "extreme cruelty" as defined by the second portion of pragraphh d, to wit, "indignities to the person," etc., was within the instructions of the Congress. When we found, however, by the explanation given to us by our colleague, Mr. Siddons, of the District of Columbia, who was very apprehensive that the addition of this cause might open the door to abuses, and lead to what the Congress did not desire, to wit, a practical extension of the causes for divorce, the Committee, seeing that the Pennsylvania statute enumerated this as a separate and distinct cause of divorce, directed that it be stricken out, and they added a note, as you will see in print, as follows:

Note.—The foregoing causes for divorce *a vinculo* are, *in extenso*, the causes suggested by Par. "B" of Resolution 6, adopted by the Congress on Uniform Divorce Laws, February 19-22, 1906, as being in fact recognized by a large number of the states in the Union, but each state is at liberty to reduce or increase the same as its citizens may deem advisable.

Now, the delegates may ask, why has the Committee then retained this as one of the causes for divorce *a mensa* when it is stricken out as cause of divorce *a vinculo?* The Committee recognized the fact that they did take a responsibility in permitting that to remain as one of the causes *a mensa.* But, obviously, the distinction is so very great that the Committee did not feel that the Congress had in mind any special desire to restrict the causes of divorce *a mensa*, that being merely protecting legal separation. It seemed to us that, from the sentiment of the Congress as expressed in the debates and in its vote, a cause of this sort would universally be recognized as a proper cause for legal separation, to wit, such indignities to the person, such threats, such acts of abuse as rendered the condition of the other spouse intolerable and life burdensome, ought to be, by universal consent, a cause for legal separation, though not necessarily a cause for divorce, though it is recognized as a cause for divorce in many States, particularly in Pennsylvania.

On top of page 6, line 4, the words "to the person" are stricken out, and the word "and" is changed to "or." The reason for striking out the words "to the person" is that the Committee felt that in this case of divorce, divorce *a mensa*, there might be such indignities con-

veyed by word of mouth as might not strictly be an indignity to the person, and yet would be as moving a cause for divorce *a mensa* as though there had been actual blows struck. The note which is added explains this matter further.

If the delegates will now turn to sections 7, 8, 9 and 10 ,they will find that those sections deal with the question of personal service in actions for annulment and for divorce, and for publication in actions for annulment and in actions for divorce. This was as far as the Committee thought it wise for this Congress to go in this very, very difficult subject of service. The difficulty is not so much in the state where both parties are resident, but it at once arises where the parties reside in different states, or where service has been obtained, as it was in the recent decision of the Supreme Court of the United States in Haddock vs. Haddock, by publication in one state in a manner not recognized in another state, leaving the parties divorced in Connecticut and not divorced in New York. There is no subject that the Committee has attempted to handle more difficult or more important, and to which it asks more closely the attention of every member of this Congress. If anything is found here that is not absolutely responsive to the sentiment of the Congress, it ought to be corrected. It is not expected that these provisions will form a complete working statute on the subject of service. As explained in the report of the Committee, the first draft of the statute did undertake to do that. The first draft submitted to the Committee on Resolutions, assuming that the object of the draftsman was reached, was a perfect divorce code. But in the State of Missouri there is one kind of practice and procedure, in the State of Illinois there is another, in the State of Pennsylvania another, and in the State of New York still another. If this Congress, therefore, were to send out a perfected bill covering the subject of procedure and practice to the State of Illinois, the Legislature of that State, in all probability, through its judiciary Committee would say "This entails too much labor, and, aside from the labor, it entails too great a change in the jurisprudence of the State, so far as relates to practice and procedure; we cannot, in order to meet the difficulties on the subject of divorce, change the precedents of years in regard to other branches of the law." Obviously, it is not necessary that they should. If the Legislature of Illinois will adopt in its code of procedure substantially the principles that we wish to safeguard here, namely, that there shall be actual notice brought home to the respondent in every case, so that he or she may have the opportunity, if desired, to come in and defend; if there is such a careful safeguarding of the rights of all parties, and particularly the right of the public, that there shall be no fraud or collusion; if no divorce is granted on the testimony of the plaintiff supported only by the

admissions of the defendant; if the Court sees fit to have a hearing in its presence, if, in other words, the State of Illinois in all divorce cases for the causes recognized in the State of Illinois, has a fair, thorough trial, as far as the limitations of the law, and of human nature will permit a fair trial, then we think it right that the decree of the Court of Illinois establishing a new legal status for the parties to that divorce suit shall have full force and effect throughout the United States of America. And if that is so, then this scandalous anomaly of a party being divorced in one state and not in another will be abated. Of course, that is not the only purpose of this proposed code of procedure suggested here, but it is the very obvious one. And, therefore, section 10 was stricken out.

VICE-CHANCELLOR EMERY, New Jersey: The Chairman has just said that section 10 was stricken out; I think he overlooked the fact that a substitution has been adopted, and the substitution will be found on the back of the slip headed Substitute for sections 7, 8 and 9.

WALTER GEORGE SMITH, Pennsylvania: My friend, the Vice-Chancellor, is perfectly right, and I thank him for calling my attention to the matter. What I have said applies to section 10 under the heading "Procedure," where we have stricken out entirely a detailed procedure so far as service was concerned. It applies also to the more elaborate code submitted to the Committee, and which has been reduced to this simplified form. But the substituted sections from 7 to 10, which we now have before us, repeat all that this statute contains on the subject of notice in actions of annulment, and notice in actions for divorce; and it does not differ substantially from what has already been set up; it is merely a matter of phraseology, a change for the purpose of clearness. I will leave to the members of the Congress the opportunity to read it over with care, and see whether it does not. If I should read it now, it would perhaps anticipate a debate on those particular sections. So you perceive that pages 7, 8, 9 and 10 are entirely stricken out, and new pages 7 and 8 take their place. Turn now to page 11; we have stricken out the notes after sections 11, 12, 13 and 14. We come now to page 15, on the effect of foreign decrees. In the sixth line from the top of the page we strike out the word "above" and insert the words "in sections 7, 8, 9 and 10 of this act." In the third line of the proviso, between the words "country" and "to obtain," we insert for clearness the words "in order." We strike out the words "annulment or" entirely, and in the next line we strike out the word "here" and insert "in this state." In the next line we again strike out the words "annulment or," so that the proviso reads:

"Provided, That if any inhabitant of this State shall go into another State, territory or country in order to obtain a decree of divorce for a cause which occurred while the parties resided in this State, or for a cause which is not ground for divorce under the laws of this State, a decree so obtained shall be of no force or effect in this State."

On page 16 we strike out the whole of the section after the word "pending" in the sixth line.

Now, Mr. Chairman, I hope I have explained the purposes of the Committee. I will ask my colleagues, many of whom are present, kindly to correct any inaccuracy of statement I may have made, or to fill up any gap that may have occurred in the explanation.

SENECA N. TAYLOR, Missouri: I rise to a question of privilege. My colleague, Mr. Percy Werner, has a resolution which he would like to refer to the Committee on Resolutions without reading.

The PRESIDENT: If there is no objection, that may be so referred.

On motion, adjourned.

FIRST DAY

Afternoon Session.

November 13, 1906.

The Congress resumed its labors at 2.30 o'clock, p. m., President SAMUEL W. PENNYPACKER in the Chair.

SECRETARY STAAKE: The Secretary takes a great deal of pleasure in reading the following communication:

"Phila., Nov. 13th, 1906.

Hon. William H. Staake:

Dear Sir: At a meeting of the Executive Board of the National Congress of Mothers, held in Philadelphia, October 10th and 11th, it was voted to send delegates to attend the Divorce Congress, and the following were appointed:

Mrs. Howard W. Lippincott,
Mrs. Frederic Schoff,
Mrs. Edgar Marburg,
Mrs. Edward Merchant,
Mrs. John Moyer.

Very truly yours,
MARY V. GRICE,
Cor. Sec., per J."

The PRESIDENT: The statute recommended by the Committee on Resolutions is now before you. What is your pleasure with regard to it?

AMASA M. EATON, Rhode Island: I move that we now proceed to consider the proposed statute section by section.

Duly seconded, and agreed to.

The PRESIDENT: The Secretary will now read the first section. I suppose it was the spirit of the motion of the gentleman from Rhode Island that the statute should be taken up paragraph by paragraph, as well as section by section. Do I so understand it?

AMASA M. EATON, Rhode Island: Yes, certainly.

The PRESIDENT: Unless there be objection, the subject will be so treated. The question will then arise upon the adoption of the first paragraph, which the Secretary will now read.

The Secretary then read the heading of the first paragraph, as follows:

CHAPTER I—JURISDICTIONAL PROVISIONS.

Article I.—Annulment of Marriage.

Section 1. Causes for Annulment.

A marriage may be annulled for any of the following causes existing at the time of the marriage:

Note.—See Summary of Divorce Laws, Idaho, p. 45.

a. Incurable physical impotency, or incapacity for copulation, at the suit of either party: Provided, That the party making the application was ignorant of such impotency or incapacity at the time of the marriage.

WALTER GEORGE SMITH, Pennsylvania: I move the adoption of the paragraph just read.

Duly seconded.

ERNEST MERTON, Wisconsin: I move to strike out of paragraph "a" all of the section after the word "party;" in other words, I move to strike out the whole proviso. At best, it seems to me to be surplusage, to say the least; and, in the first place, why should we put a woman or a man in the position of testifying affirmatively that he did not know anything about the difficulty existing at the time of marriage. How should he know it?

Amendment duly seconded.

WALTER GEORGE SMITH, Pennsylvania: I hope that the gentleman will not press that motion. This matter was put there

deliberately. It is not an omission on the part of the Committee. It was not overlooked in any of its aspects. It was carefully considered. It might well be that, notwithstanding the impotency or incapacity referred to, parties would deliberately enter into the contract of matrimony; and if, with that knowledge, they did enter into such contract, it ought not to be broken. No possible harm can come from the proviso, and if it is stricken out injustice, and great injustice, may be worked.

VICE-CHANCELLOR EMERY, New Jersey: Of course this proviso includes an exception by reason of old age. The parties thoroughly understand that the reason for entering the marriage is not the fulfillment of those duties and obligations to the State which might be contemplated if the parties were young. As Lord Bacon says, "Man has a cause or reason to marry at any age; old men sometimes marry for nurses;" and to provide that where this physical incapacity was known to a party who engaged to take his spouse for better or for worse, to say that in that case they may afterwards break up the marriage relation for a reason which existed at the time, would seem to accomplish injustice. And I may say that this clause or proviso is included expressly in most of the States which allow annulment, and where it has not been expressly included, the courts of a great many of the States say that it must be included by implication. If the parties knew of the incapacity at the time, of course there is not to be an annulment of the marriage. It is a question of knowledge. And so far as the matter of proof is concerned, it has to be proved on the other side; so that the defendant has the position of advantage at any rate. To strike out that proviso, therefore, would seem to me to give an opportunity of procuring a decree for divorce, which would amount to a fraud on the obligation incurred. I think it will be found, on an examination of the statutes of the various States where that clause is allowed that that proviso is either expressly included in the statute itself, or the courts, in applying the statute, say that in equity and justice it must be included as implied. I think that was the reason it was inserted in this draft.

AMASA M. EATON, Rhode Island: I think the Vice-Chancellor has abundantly proven the correctness of the proviso in this case, and therefore, I hope that the motion of the gentleman from Wisconsin will not prevail.

CHARLES THADDEUS TERRY, New York: If it were not that I owe it to my State and to myself, I would make an apology to the Congress for taking the two or three minutes I am going to take with reference, not only to this paragraph, but with reference to

the two or three other paragraphs in this section. I wish simply to get myself on record, and then stop. My general objection to these various paragraphs under section 1 is, first, that they are illogical, because they provide, in at least four cases, for the annulment of a marriage which never took place, and in other cases they provide for the annulment of marriages which at best were voidable. Insane persons cannot contract. Persons within the degrees of consanguinity could not contract. A bigamous marriage could not be made. Therefore, there is a confusion here, as it seems to me, between void and voidable marriages. That would be my general objection to them, and it might as well be made on the first paragraph as any other. It is for that reason that I would oppose the passage of the section, not for any other reason; and I mean by that, not for the reason that I think such marriages should not be dissolved, if you can speak of dissolution of marriages which never took place.

With reference to paragraph a, I do not make any objection. I would like to make the suggestion and have it answered, if it is worthy of answer, that the action for the dissolution should have a time limit put upon it, and it should not in any case be allowed after the death of one of the parties; and I have in mind in that respect the question of the effect which it might have on property rights.

SENECA N. TAYLOR, Missouri: I have a very high respect for the legal attainments of the gentleman from New York, yet confess that I never heard an argument before adduced in any tribunal, and especially did I never hear one produced to the court, to the effect that because things existed when the contract was made the party was precluded from having the court declare it null. Of course, when we seek for annulment of the marriage, we deal with two classes of cases; one class where one of the parties already had a husband, and where the law says the contract of the second marriage entered into is absolutely void. In any case where the law prohibits a thing being done, that thing is not voidable but absolutely void. In all that class of cases, every author that has ever written on the subject of divorce says parties may go on, if they like, and treat that kind of a marriage prohibited by law as void, but it is best to take the decree of a Chancellor declaring it void, because in that way you avoid complications with regard to property that the gentleman suggests.

The other class of cases is where the marriage is merely voidable. There, too, the thing stands as a marriage, and it stands until the party who has been imposed upon, who has the right to declare the marriage voidable, acts, and then it relates back as of the date of the marriage, and the marriage becomes void as of that date. So,

I say that the argument strikes me as rather strange, for you have a well settled principle of law itself that you can go into a court of chancery and ask to have a contract set aside because it was contrary to law, or because the other party was imposed upon.

CHARLES THADDEUS TERRY, New York: If I may be indulged one word—I think my friend is entirely correct, but he misapprehended what I said. My point was that the two things should not, in my opinion, be confused and put in the same section. You should not put into one section void marriages, with reference to which I agree there should be a decree entered, on the one hand, and voidable marriages simply on the other hand, because it leads to confusion; that was my point.

JOHN C. RICHBERG, Illinois: Does it not require a decree in both cases, whether the marriage is void or voidable?

CHARLES THADDEUS TERRY, New York: But the effects, I think, may be entirely different.

The PRESIDENT: Are you ready for the question of the amendment, which is to strike out the proviso of paragraph a?

The question being as stated by the Chair, it was lost.

The PRESIDENT: The question now comes up upon the paragraph as printed.

The question being as stated by the Chair, it was agreed to.

WALTER GEORGE SMITH, Pennsylvania: I now move the adoption of paragraph b.

Duly seconded.

The Secretary then read paragraph b, as follows:

b. Consanguinity or affinity according to the table of degrees established by law, at the suit of either party; but when any such marriage shall not have been annulled during the life time of the parties the validity thereof shall not be inquired into after the death of either party.

The question being upon the motion to adopt paragraph b, it was agreed to.

WALTER GEORGE SMITH, Pennsylvania: I move the adoption of paragraph c.

Duly seconded.

The Secretary then read paragraph c, as follows:

c. When such marriage was contracted while either of the parties thereto had a husband or wife living, at the suit of either party.

The question being upon the adoption of paragraph c, it was agreed to.

WALTER GEORGE SMITH, Pennsylvania: I make the same motion with regard to paragraph d.

Duly seconded.

The Secretary then read paragraph d, as follows:

d. Fraud, force or coercion, at the suit of the innocent and injured party, unless the marriage has been confirmed by the acts of the injured party.

The CHAIR: The Secretary will now call the roll of the States.

WALTER GEORGE SMITH, Pennsylvania: Of course our rules should be enforced, but we are considering the various paragraphs now, and would it not conduce to relief from tedium if instead of calling the roll on each of the paragraphs, the roll would only be called upon the adoption of the section, after each paragraph has been adopted viva voce?

The PRESIDENT: Is there any objection to that manner of procedure? Does any gentleman object?

FRANK H. KERR, Ohio: I have no objection to that method, but would not that be unfair to our friend from New York, who wants to register his vote?

The PRESIDENT: I want to give the gentleman from New York an opportunity to object, if he wishes.

CHARLES THADDEUS TERRY, New York: I shall not object, provided I may, at the end of the vote, have my vote recorded in the negative.

The PRESIDENT: We will give you ample opportunity. It is moved and seconded that paragraph d be adopted; are you ready for the question?

PRESIDENT H. K. WARREN, South Dakota: Do we understand that if roll call is desired on any paragraph it may be had?

The PRESIDENT: Oh, certainly.

The SECRETARY: How would it be to call the roll of the States at the end of the chapter, or at the end of the article?

The PRESIDENT: That is what the Chair proposes to do.

ADOLPH SLOMAN, Michigan: I would like to inquire whether such a course would permit of any changing of the section after the various paragraphs have been adopted?

The PRESIDENT: Undoubtedly, opportunity is given at the presentation of each paragraph for any gentleman to move an amendment; or at the time when the motion arises to adopt any section. Therefore, unless it is objected to, the vote on the paragraphs will be taken viva voce, and on the adoption of the entire section the vote will be taken by States. There is no misunderstanding about that now, is there?

AMASA M. EATON, Rhode Island: In addition to that, do I understand that after a paragraph has been adopted, there is an opportunity to move any amendment before putting the whole section?

The PRESIDENT: Undoubtedly.

WALTER GEORGE SMITH, Pennsylvania: I now renew my motion to adopt paragraph d.

The question being upon the motion of Mr. Smith, paragraph d was declared adopted.

WALTER GEORGE SMITH, Pennsylvania: I move the adoption of paragraph e.

Duly seconded.

The Secretary then read paragraph e, as follows:

e. Insanity of either party, at the suit of the other, or at the suit of the committee of the lunatic, or of the lunatic on regaining reason, unless such lunatic, after regaining reason, has confirmed the marriage: Provided, That where the party compos mentis is the applicant, such party shall have been ignorant of the other's insanity at the time of the marriage, and shall not have confirmed it subsequent to the lunatic's regaining reason.

ADOLPH SLOMAN, Michigan: I understand a part of the purpose of this Congress is to restrict the causes for annulling marriages as of divorce rather than increasing the number. Now, what is insanity? May it be a temporary emotion? May it be monomania? I have even heard it stated that a party that favored prohibition in some communities was considered insane; or, as in my locality, some parties that voted for the Democratic candidate. It strikes me that the insanity which would be ground for an annulment of marriage should be of a permanent or fixed character, something more than a mere illusion. It may be charged that a young man who married a woman well along in years, which is done now and then, was insane, still, that ought not to be a ground for annulling the marriage. I therefore suggest an amendment to that paragraph by inserting after the words "insanity of either party" the words "which prevents such party from distinguishing between right and wrong," as de-

fining what insanity consists of. Further on in the act they use the word "lunatic." In looking up the dictionary, I find the term lunatic at one time was confined to monomaniaism, to insanity on one particular subject. Latterly, it has extended its meaning so as to be almost as broad as the term insanity. Why they should use the word lunatic in one part of the section and insanity in the other I confess I am at a loss to understand, unless they try to emphasize the character of insanity, which this is not, owing to the definition given by law writers. I therefore move that in the place of the word "lunatic" the words "insane person" be substituted; so that the paragraph, if I may be permitted, will read as follows:

"e. Insanity of either party, which prevents such party from distinguishing between right and wrong, at the suit of the other, or at the suit of the Committee of the insane person, or of the insane person on regaining reason, unless such insane person, after regaining reason, has confirmed the marriage: Provided, That where the party compos mentis is the applicant, such party shall have been ignorant of the other's sanity at the time of the marriage, and shall not have confirmed it subsequent to the insane person's regaining reason."

The PRESIDENT: We are dealing now with a matter in which words are things, the adoption of a statute. I therefore suggest to the gentleman that he put his resolution to amend in writing, so that we may have it definitely before us.

The resolution was then submitted in writing.

SENECA N. TAYLOR, Missouri: To get the matter before the house, I second the amendment of the gentleman from Michigan.

JOHN C. RICHBERG, Illinois: I would have no objection and I apprehend a great many members of the Congress would have no objection to agreeing to the gentleman's amendment if it accomplished the purpose which he seeks to accomplish. But it appears to me that, instead of accomplishing that purpose, it makes a matter which he considers not definite enough quite indefinite. Who is to determine what is right and what is wrong? The amendment proposed is a definition of insanity, and that definition limits it simply to the phraseology, to the one thing, whether a person can distinguish between that which is right and that which is wrong. It seems to me that is an exceedingly meager definition of insanity. An illusion may be insanity, but who shall judge what is an illusion? Nine-tenths of the people claim certain people who have certain religious beliefs are laboring under illusions and delusions; but we would not by any means consider them insane, nor would they be

considered as insane. On the contrary, the courts in every State in the Union have upheld the validity of the wills made by such persons. I think the only safe course is that you must leave something to the tribunal before whom the parties appear. We cannot attempt to settle in a code of this kind either the rules of evidence or the rules of law as applied in the different States of the Union; and when we enunciate the general principle, the general idea upon which we may be able all to agree unanimously, that is about as far as we can go. And I think we can all say, coming from the different States, that we have confidence enough in our courts that they will administer a code of this kind, not only according to its letter, but according to its spirit; and the moment we start in to define and particularize words and phrases, I think we will run up against obstructions which we do not dream of now. Certainly, this matter may well be left to the courts where such a cause arises. The parties are protected, they have counsel, they have the court, they have the opportunity of a jury trial, if desired, and certainly the courts can safeguard the interests of these people, and I apprehend there will be no danger that any divorce would be granted which, under the decisions of its Supreme Court and the law of the State, should not be permitted.

AMASA M. EATON, Rhode Island: I hope that the amendment which has been proposed will not prevail. The presumption of law in every case is that a person is sane until he is pronounced insane. Insanity, therefore, means the pronouncement of insanity by some competent process of law, some judgment possibly of that kind. Until then a man is presumed to be sane. As has already been said, the definition which it is sought to establish by this amendment would be far from inclusive of all cases of insanity, for there are undoubtedly many who are insane, and yet who can distinguish right from wrong. A man who is under a delusion that he is going to be murdered is insane, but he can distinguish right from wrong. That is a very imperfect definition of insanity. Therefore, it seems to me that the substitution will accomplish no purpose except to limit insanity to merely one of its phases, and will not leave the word broad enough to include all kinds of insanity.

With regard to the second substitution, the attempt to define lunatic, it seems to me to be unnecessary, because lunatic does substantially mean insane person, and is used here as a noun, because unfortunately we have in the English language no single word to express the words insane person. As we all know, of course, lunatic is derived from luna, the moon, because of old it was thought that insanity was a disease caused by the moon. Lunatic, therefore, is a generic term, including all insane persons, and is a proper word to

use, especially in the absence, as I have said, of any other one single noun that characterizes insane persons. For those reasons, it seems to me, that the amendment offered should not be adopted.

VICE-CHANCELLOR EMERY, New Jersey: I rise to say a word not because I think any suggestion from me may be necessary in order to determine the vote of the Congress on this subject, but because I think the mover of the amendment is entitled to it, and to a statement of the reason why, as it seems to us, the use of general terms or words is absolutely necessary, and why the use of any other terms or express definitions will not do. The reasons are, perhaps, familiar enough to lawyers, but they are not so familiar to laymen. For instance, I do not know any case that gives a better illustration of it than the attempt here to define insanity, and it will show that a particular kind of insanity only is suggested which applies to another and entirely different class of cases. If a man is indicted for a crime you hear a judge charge the jury that if he was insane he is not guilty. One test of insanity on the question of responsibility for crime is often put as the power to distinguish between right and wrong. Why is that the test there? Because it is the question there. The question is the state of mind to distinguish between right and wrong. You have again a large class of cases in which the validity of a will is in question, and the question is, was the will valid because the person was insane? The same term is used, but by no means do the courts use the same definition. He may have been perfectly unable to distinguish between right and wrong; he might not have been responsible for a criminal act, but the test of sanity in that case is his sanity applied to the situation, that is a sanity, a condition of mind in which the man can take in his situation and recognize his position and responsibilities. There is another class of cases of contracts generally. Then the test of sanity is the ability to understand the contract. Insanity is applied here as defined according to the nature of the ability required for the purpose of making the contract in question. A man may or may not, in the criminal sense, have the power of distinguishing between right and wrong, but it would be impossible to apply here a definition of insanity such as would obtain in a criminal case. I only make this suggestion in order to show what the necessary legal position in reference to the use of general terms in statutes requires. The use of the general term insanity in this statute relating to marriages would not mean by way of definition exactly the thing that it would mean in a criminal statute; and it would be impossible for us to undertake here to import into this statute a definition that would include everything which would set aside a marriage contract on the ground that a person was insane. The same thing applies with

reference to the use of the term "fraud." We had quite a little discussion at the Congress in Washington as to defining fraud, but it was finally concluded it must be fraud that vitiates that particular contract, and that it would not be wise for the Congress to attempt to say in advance that fraud is defined thus and so; so with this term. I only rise here in order to emphasize at this point what I think is necessary to be thoroughly understood in applying all these general terms in the statute, namely, that it must be borne in mind that lawyers and courts, in construing the general terms of this statute, have always in mind the general object and nature of the statute, and that they are limited by the principles which apply to them.

SENECA N. TAYLOR, Missouri: With the consent of the gentleman who moved the resolution, I wish to withdraw my second. I seconded the resolution only that full discussion might be had.

ADOLPH SLOMAN, Michigan: In view of the sentiment expressed, I withdraw the amendment.

The PRESIDENT: Are you ready for the question on the adoption of this paragraph e?

(Calls for the question).

The PRESIDENT: There is one subject to which I think I ought to call attention. Marriage is purely a personal relation. It is a contract which can only be made by the parties themselves; no one else can make such a contract for them. This paragraph proposes to interject a third party, and to give him a certain power over that relation. I mean, the committee of the lunatic. The main object in the appointment of a committee is to look after the property of the lunatic. Now, let us suppose a wife who is a lunatic; the husband has a right, perhaps, to have that contract annulled. He does not choose to exercise that right. The wife does not want it annulled, she is unable to exercise her right. And it is suggested that this third person, the committee, shall interpose, and ask to have that contract annulled when the other party does not want it, and when neither party wants it.

There is another reason. Lunacy is a disease, and, like all diseases, it is subject to being cured. Sometimes there are lunatics who have an attack of lunacy for a brief period, and then recover. Now, why not give this wife that chance of recovery? She may get over her disease, and find when she is restored to health that this purely personal contract into which she has entered has been annulled by the action of some one who is not at all a party to it. I suggest that.

WALTER GEORGE SMITH, Pennsylvania: May I call the President's attention to the fact that this paragraph refers to the insanity of either party at the time of making the contract?

The PRESIDENT: Even then there may be a recovery. Why should the committee of the lunatic be permitted to interfere with it?

WALTER GEORGE SMITH, Pennsylvania: With the profoundest respect for the authority of the presiding officer, surely he would not mean that it was desirable on grounds of public policy that a contract entered into by a person, being a lunatic at the time, and incompetent to make a contract, could not be broken by his committee, the only legal representative he could have?

The PRESIDENT: Why not? Any contract, even a void contract, may be renewed and continued by the parties.

WALTER GEORGE SMITH, Pennsylvania: But it never was a contract.

The PRESIDENT: Now, here is a man who has been married, formally married, or a woman has been married, if you choose, and they want to continue that relation. Why should they not?

SENECA N. TAYLOR, Missouri: The President has said that in the matter of marriage there are but the two parties, the husband and the wife. I think, with all due deference to the judgment of the presiding officer, there are three parties. The third party is the public. It seems to me as a self-evident proposition that if a man has persuaded a woman of property to marry him, the woman being insane, and he marrying her for that purpose and sustaining the relation of husband and wife, and propagating children between the parties in that condition, the public is interested.

This goes to the question whether at the time of the marriage insanity exists. That is the first proposition. We know that sometimes persons who are insane have lucid intervals, therefore, the word committee of the lunatic, and if the person was very, very insane, as Chancellor Emery has said, probably the marriage never would have taken place, but this thing has taken place. Now, the question is whether it should be annulled or not. It seems to me, not only are the parties interested themselves individually, but unborn children are interested; and with regard to them, we have the right as conservators of good morals, as conservators of humanity, to speak out as we have spoken in this resolution.

The PRESIDENT: I have only one word to say, that it seems to me the argument is fallacious from beginning to end. When people are married there is a presumption of sanity. You propose to annul it after the marriage by an ascertainment at the suit of a third party that these people were not sane, although it has never been determined before. And you attempt to substantiate it on the ground

that the public is interested. The public did not appear in this matter. If the State is concerned, there might be a process by which the State could enforce its rights. But that is not what you propose to do. You propose to permit a stranger, who is appointed for another and different purpose, to undertake to annul that marriage on the ground of an alleged condition, which has not been determined as between the parties. The way to do this, if it be necessary, would be to confine that lunatic.

TALCOTT H. RUSSELL, Connecticut: I am much impressed by the weight of the remarks made by the Chairman, but I think he overlooks one situation. Suppose this case—suppose a designing man has imposed, as he very often might, on a weak woman who is practically in no condition to give consent to any contract. Suppose she has a large amount of property, and the property and person of the woman are in charge of a conservator. This man gets the woman off in a some way and entraps her into a marriage. She is in no condition to enter into that marriage. Now, is it not so? She is in no condition to exercise her will as to whether the marriage shall be annulled or not. She is grossly incompetent, absolutely incapable of exercising her will on any subject, which is very often the case. Now then, do you say that the persons interested in the property, the relatives, and those who are interested in the person herself in seeing she should be well taken care of, have no right to interfere, and have that marriage declared void? If you take that position, you lay people who are in this unfortunate condition open to the exploits of designing persons who are solely after their property. I think in such a case as that undoubtedly the conservator ought to be allowed to interfere, and have that marriage declared void, when the woman is not well enough to exercise her will on the subject. It seems to me the statute has properly provided for that case, and I think that case ought to be provided for.

The PRESIDENT: Don't you see as a lawyer that what you are trying to do is to disturb a personal relation on the ground of the protection of property? Now, that is not necessary. Courts of equity will protect those property rights.

TALCOTT H. RUSSELL, Connecticut: They cannot protect property rights where the marriage relation fixes property rights, and where the marriage relation has a right to exist. I put this on the ground of protection to the individual herself or himself. Suppose this poor weak woman or man—we have to protect both parties—suppose a designing woman, if you please—there are more men here than women, and we can get more sympathy—suppose a designing old woman has entrapped an imbecile boy—

A MEMBER: Or a very young woman a very old man.

TALCOTT H. RUSSELL, Connecticut: That will concern some of us more than the case of a boy. Do you say under those circumstances, where the boy in the case supposed has not brains enough or will enough to have any will on the subject, or to institute any proceedings for his own protection, do you say that this designing woman is a proper person to have the care of the boy himself? Cases have been known where a boy of that sort might be married to a designing person, and subsequently made away with for the purpose of getting possession of his property. Now, in the interests of the boy himself, it would be necessary for his guardian or a conservator to interfere. Do I understand the Chair to say that on account of this being a personal relation the guardian and protector has no right to interfere whatsoever? I think the statute has properly provided, and ought to have provided for that state of affairs.

JUDGE WILLIAM H. STAAKE, Secretary: The cause must have existed at the time of the marriage. There would not have been a committee of the person, because committees can be of both kinds, a committee of the person and a committee of the estate, unless the demented condition had continued after the marriage. Now, when that committee of the person is appointed, for what purpose is he appointed, if he is merely the committee of the person, except to protect the person of the alleged lunatic? Assume the condition existed at the time of the marriage, assume that it continued, and as the result of the continuance two committees were appointed, a committee to look after the estate and a committee to look after the person. Assume that the person was a woman of unsound mind, and it must have been legally adjudicated that the woman was of unsound mind or a committee would not have been appointed, and it was found that she had a brutal husband, a man who did not care that he was bringing offspring into the world who might inherit from their mother the taint of insanity, but her committee felt that society needed some protection from such a man, why is it not one of the most solemn obligations of the committee to protect the person of that woman, and to ask that the marriage which was a voidable marriage should be declared void? I admit that if the woman was a lunatic at the time of the marriage she was incapable of making a contract—why would it not be the duty of the committee of the person to ask, that a court of competent jurisdiction should declare that the marriage be annulled on account of the conditions existing at the time of the marriage?

VICE-CHANCELLOR EMERY, New Jersey: I only wish to make one suggestion on the motion made by the Chairman.

The PRESIDENT: I did not make any motion; it is merely a suggestion so that the Congress understands the position.

VICE-CHANCELLOR EMERY, New Jersey: I shall take the privilege of making the motion for the Chairman, because it is a question which ought to be brought before the Congress. I will make that motion, reserving, if you will allow me, the right to present my views even if they should turn out adverse to my own motion. I move that the words "or at the suit of the committee of the lunatic" be stricken out.

CHARLES F. LIBBY, Maine: I second the motion.

VICE-CHANCELLOR EMERY, New Jersey: This motion should be discussed. I have here a publication of the laws relating to divorce very kindly made for me by the publisher of the West series of publications. The courts in the States differ as to the rights of anybody, except the person himself who made the contract, to file a bill or petition for relief. They take the view which has been expressed by the Chairman, that it is purely personal, and that on an application to annul marriage for insanity in a purely personal matter, no one can assume to act as guardian if the person is a lunatic, neither will the court assume to appoint anybody as guardian for the lunatic, because it is a matter that requires the exercise of volition, and the lunatic not being able to do it, the court will not undertake to do it for him. That is the view of one set of States. It is not a unanimous view. In North Carolina, I think that is the State, a suit to annul a marriage for the lunacy of one of the parties may be brought in the name of the lunatic by his guardian, or in the name of his guardian. Now, that shows you how the States differ on that question. A good many of them follow the rule that no guardian or next friend can undertake to file a bill of that kind, which he could in ordinary property matters.

There are States, however, which by express statutory provisions allow the guardian to file the bill. Massachusetts is one of those States. Massachusetts under her statute provides that every libel of divorce shall be signed by the libellant, if of sound mind, otherwise it may be signed by the guardian of the libellant, or by a person admitted by the court to prosecute the libel as his or her next friend.

It seemed that there should be some uniformity in reference to that practice, and the question was whether the right should not rather be confided to the committee regularly appointed after an adjudication of lunacy than to allow some person, perhaps irresponsible, to appear as the guardian or next friend. I think that is the situation in the different States with reference to this provision of the committee of a lunatic filing a bill. In my own State there is

no such provision, and I do not know that the question has yet arisen as to whether a bill can be filed by any guardian or next friend on behalf of the lunatic. The States differ. Therefore, in the suggestion of a uniform law, inasmuch as some States allowed it to be done under what you may call the common law decisions, and others had statutes allowing particular persons to do it, it seemed to be wise, if anything was to make a law uniform, to adopt a provision that the committee should do it. When I say common law, I mean the common law of the court, the decisions; I do not mean, strictly speaking, the common law. But I understand that there is no statute in North Carolina, Mr. Busbee will correct me as to that.

F. H. BUSBEE, North Carolina: There is no statute applicable to the case, but I think the decision referred to, if the case arose again, would still stand good.

VICE-CHANCELLOR EMERY, New Jersey: There are several other States, some denying and some affirming the right.

The PRESIDENT: Are you ready for the question on the amendment?

CHARLES F. LIBBY, Maine: As one of the committee who formulated this act, I feel perhaps that it might be proper to state the reasons that moved us. It is with great diffidence that any lawyer would differ from the Chairman here; at the same time, it seems to me that this is a case that is properly provided for by the act. I do not think that the term third party is quite exact. The committee is the legal representative of a disabled person, who is acting in the interest of the disabled person. The question is, is there such a condition of affairs likely to arise as to require the interposition of a legal representative of an insane person to protect the insane person's interest? If there is, then this act has properly provided for that case. I insist that there does arise in cases of insanity just such a condition. And it is proper that the law should be made uniform in providing a legal protector for the insane person. We can leave to the courts to decide whether the case has arisen or call for their interposition.

C. LA RUE MUNSON, Pennsylvania: It happens that within a few weeks a case has come to my professional care which involves something practically in this line, and while it is not for annulment of marriage, while the woman is not insane, the facts which I shall soon show you will show a reason why it is of wisdom to include in the statute a power to the committee of an insane person to file a libel for annulment. These, in short, are the facts: A., a man well born, of large property, after years of dissolute life, married a

woman of inferior character. Her life, as I suppose, probably has been proper, but within two years this man's mind has entirely disappeared. He is to-day a helpless body of flesh, without mind, without reasoning power. His wife has gone back to more than evil ways, so evil in fact that, in my judgment, and in the judgment of physicians, the man's life is in danger to-day. I think herself and her paramour are gradually killing that man. There is no committee in lunacy for this party, there is no necessity for it; but it is necessary for the preservation of his life that he should be divorced from that woman. Under the law of Pennsylvania, it is not possible for a committee in lunacy to present a petition. The petition must be signed by the husband himself. Imagine my going to that man for his affidavit to the truth of his petition. He will sign his name to whatever I will tell him to sign it, recognizing me as his counsel for many years. He will sign the petition, a subpoena will go out in due form, and the proof will be absolute and overwhelming. Within a few hours after that petition is written and the citation has gone out, the woman herself or her paramour will succeed in procuring from him a formal dismissal of that suit. Of course I may succeed in having that dismissal set aside, but the thought in my mind is that if the law of our State permitted a committee in lunacy to act for this person, I would be sure of having justice done, of getting him his rights. That same reason would apply to this case under this statute, the insane person can not practically make out, swear to and present his or her petition. Our statute does not in subsequent sections permit a committee in lunacy to begin an action of divorce, but simply for the annulment of the marriage, which goes to the very question of the sanity or insanity of the person, and there should be a power beyond that of the person himself or herself to swear to and make a petition. I am therefore for the statute as it stands.

VICE-CHANCELLOR EMERY, New Jersey: May I trespass just long enough to make one additional suggestion, which touches also the point raised by the gentleman from New York on the general objection he has made; and that is this—what is the status in a court of a marriage which is void for a reason existing at the time of the marriage? The general doctrine of the courts is this, as I understand it: That where a marriage is void at the time, or may be declared void, the question of the validity may be decided in a subsequent suit between different parties. And that fact has, to the minds of many courts, been only an additional reason why they should allow the direct proceeding to set it aside, in order that once and for all, acting on the contract itself, the peace of mind of all parties to the contract might be established, and also its validity

or invalidity established as to all persons. Now, that principle is applicable to the case of a marriage void by reason of insanity existing at the time; and, under the law, as declared by most of the courts, if this committee of the lunatic were raising the question on an issue that involved property, he might in that suit attack the validity of that marriage, and show that it was void because of insanity, and in that particular suit involving the question of insanity the marriage would be in effect declared void as to that case. That being the situation, the question is, the committee of the lunatic having the power to test in other cases and in other ways the question of the validity of any other contract made at that time, would it not perhaps be advisable that this uniform statute point out the person and the only person who, on behalf of the lunatic, can get that general trial, and get a declaration on the question of the validity of the marriage contract?

I find in this abstract a reference to the principle decided on the question as to whether this committee of the lunatic could in any case raise the question of the validity of the marriage, and it is held that though the marriage of a lunatic is absolutely void, without being so declared, yet the court will formally decree its nullity, as well for the sake of the good order of society as to the quiet and relief of the party seeking the relief. And inasmuch as that question may be raised whenever any point of property rights, or even personal rights— supposing the husband should insist on any conjugal rights—the committee of the lunatic could on habeas corpus set up that the marriage was void; if the husband attempted to take possession of any of the wife's property by reason of his rights as tenant by the curtesy initiate, or any other husband's rights, the committee could set up that marriage as not good because the wife was insane at the time it was contracted. And therefore, this statute is a step, perhaps, in advance, it is a new one; it would be new to the practice of most States, but it is only in the same direction that, for the purpose of settling once and for all, and on the application of one and one person only, outside of the lunatic, the right should be given to the committee of the lunatic. In most States, as in the one suggested by the gentleman from Pennsylvania, the provision requiring the affidavit of the party himself or herself absolutely puts it out of the question for anybody else to bring a suit for divorce. I think those are some reasons that led to the adoption of this paragraph.

PRESIDENT WARREN, South Dakota: My understanding is that the insanity must have been established, a committee appointed and in existence at the time of the marriage?

JOHN C. RICHBERG, Illinois: Certainly.

VICE-CHANCELLOR EMERY, New Jersey: Not at the time of the marriage; he may be appointed after the marriage.

The PRESIDENT: I did not understand that from the statute as reported.

VICE-CHANCELLOR EMERY, New Jersey: It is not confined to a committee appointed before the marriage.

F. H. BUSBEE, North Carolina: The more we investigate the workings of this section, the more we will be convinced, I think, that there are possibilities of evil in it. We have heard a great deal of persons inveigled into marriage by designing men or women, and been asked the question, Shall it be possible that that relation shall continue indefinitely? As it is admitted that this suit for annulment can only be brought at the suit of the injured party, it seems to me that, if the section is to be continued, something must be done by a further provision. The authority of a committee should remain, but this section permits something like this—a man and woman may be married, and there may be disparity in money, and although the man's lunacy may increase, and although his wife may nurse him through all the evils of his lunacy year after year until he is upon his dying bed; now if he be a man of large estate nothing would be easier than to have a committee appointed, and then proof of insanity from the time of marriage—and proof will always be easy—and have the marriage declared void ab initio, and the wife thus be thrown upon the world. That is an extreme case, but no more extreme than other cases. If that could not be done under this section, I would like to be corrected.

AMASA M. EATON, Rhode Island: I beg the gentleman's pardon for interrupting him, but has he not overlooked the provision that marriage may be annulled for any of the following causes existing at the time of the marriage.

F. H. BUSBEE, North Carolina: I have expressly not overlooked it. I have put a case where a man has been insane for some years. It is the easiest thing in the world for proof to be forthcoming of insanity prior to the marriage. I gave an instance in which lunacy became pronounced soon after marriage, and I say that at the suit of an interested party, particularly if there was much money involved, it would be the easiest thing in the world to make the proof of insanity extend to the time of the marriage. Just the dawn of insanity is a very difficult thing to prove.

WALTER GEORGE SMITH, Pennsylvania: If the gentleman will permit me, I would like to ask if this paragraph is not adopted,

what relief will be given in this act to an insane person, admittedly insane, who marries another person who is insane?

F. H. BUSBEE, North Carolina: I would answer that by saying that some legislation is necessary.

WALTER GEORGE SMITH, Pennsylvania: I would like to ask, then if he would kindly suggest an amendment to this statute?

F. H. BUSBEE, North Carolina: I have suggested my inability to do that from the beginning. I suggested that it was exceedingly difficult to meet the case, but that under this section as it now exists there are great potentialities of evil or injustice.

JOHN C. RICHBERG, Illinois: Is not that the case in everything we are dealing with in this code? Is it possible for you or any one else, or any Congress, or even any court, to guard against perjury? That is exactly what the gentleman from North Carolina is referring to in this case, and that is applicable to everything we are considering here.

F. H. BUSBEE, North Carolina: I am not referring to perjury; I am referring to the difficulty of the proof of the dawn of insanity. I am not at all referring to perjury. I concur in the suggestions that have been made as to the evil; I am not referring to a wilful perjury, but I am referring to interested witnesses obtained to work a grievous wrong upon a man or woman who has for years lived with the lunatic, and is at the very last to be declared not the wife or husband. I have said that there are difficulties as to the exact proof of the dawn of insanity, just when the insanity commenced to exist. Now, insanity in some States does not make a contract void. The deed of an insane person is not void in North Carolina; it is voidable only. As I have said, I am not pretending to suggest a good remedy; I wish I were able to, but I see evils in the statute, and more so than any of the other sections, and not arising from perjury.

The PRESIDENT: There is one remedy, and that is to leave them married.

WALTER GEORGE SMITH, Pennsylvania: Will this Congress deliberately strike out this section, and by so doing say that a contract of matrimony shall continue, although entered into by an insane person, a person declared insane by a decree of a competent tribunal? If such a person is inveigled into the form of matrimony, must he remain married? Surely, that is not your meaning. Surely, that cannot be the meaning of my friend from North Carolina. Let me re-read this paragraph, and take the whole thing together. The section reads "Causes for Annulment." Still this is not an annul-

ment, it is a cause for declaring that there never was a marriage between the parties. "A marriage may be annulled," that is to say an assumed, an alleged marriage, a professed marriage," for any of the following causes existing at the time of the marriage:"

"Insanity of either party, at the suit of the other, or at the suit of the committee of the lunatic, or of the lunatic on regaining reason, unless such lunatic, after regaining reason, has confirmed the marriage: Provided, That where the party compos mentis is the applicant, such party shall have been ignorant of the other's insanity at the time of the marriage, and shall not have confirmed it subsequent to the lunatic's regaining reason."

Objection is taken to the committee of the lunatic, appointed by a competent tribunal to protect that lunatic against these very injuries to his or her person, performing his duty. It is solemnly proposed by my learned and accomplished friend from North Carolina to leave cases of that sort without remedy. Can it be possible that all the pains and care this Congress has taken, dwelling upon these wrongs, that we are to leave a marriage of that sort which never has been a marriage to remain without remedy? I cannot believe it for a moment. As my friend from Maine has said, this committee of the lunatic is not a third person, this committee of the lunatic is acting for the lunatic, represents the lunatic, and has been appointed by a proper tribunal, and that is the only way in which the rights of the lunatic can be passed upon. I will say, by way of explanation to some of the gentlemen here, who do not know the term "committee of the lunatic," that in some of the States he is called guardian or conservator, or by some other term. We are not sticklers for particular language, the language of the statute will be modified according to the term used by a particular State; but I appeal to the Congress most earnestly not to strike out this provision unless something can be put in the place of it.

JOHN C. RICHBERG, Illinois: We have really already passed upon this question by the adoption of paragraph d, where we have agreed unanimously, I think, that an annulment of marriage may be had for fraud, force or coercion. Now, if a party marries an insane person, that is a fraud.

The PRESIDENT: Would you permit the guardian of an infant, who had been deceived into a marriage, fraudulently deceived, to have that marriage annulled?

JOHN C. RICHBERG, Illinois: Certainly.

The PRESIDENT: That covers your ground.

JOHN C. RICHBERG, Illinois: Here is a fraud practiced upon an insane person; if the person were sane, he could institute a proceeding for the annulment of the marriage; but being insane, he cannot institute a suit by reason of that insanity, and must act simply through a conservator, guardian or committee in lunacy. That is all there is to the question.

PRESIDENT WARREN, South Dakota: I have an amendment by inserting words which the gentleman from Pennsylvania used in explaining the paragraph; I think it should read "insanity of either party which has been established by proper legal procedure." That seems to be the understanding, that the insanity has been proven in court.

The PRESIDENT: I take it that that is implied; that is involved in the appointment of a committee.

SENECA N. TAYLOR, Missouri: You do not get a committee in lunacy, or a guardian, or anything else unless there is a judicial declaration that the man is insane. What is implied is just as much a part of a statute as what is written in it.

CHARLES THADDEUS TERRY, New York: I rise to say one word in favor of the suggested amendment. If I cannot get this section or provision stricken out, the next best thing is to have it amended in the way suggested by the Chairman. It might seem impertinent in me to favor an amendment after all the labor that has been expended upon these sections by the learned and persevering Committee on Resolutions. If I were as well informed as they are about the reasons leading to the suggestion of the paragraph, I might feel differently, but I am not, and therefore I hope it will not call for another rebuke from my friend from Missouri if I suggest my view for a moment. The persuasive and eloquent Chairman of the Committee on Resolutions, I think, forgets one thing. If my recollecton serves me, for about two hours at our session in Washington, in very emphatic and decisive language, this body put itself on record as against divorce for insanity arising subsequent to the contract of marriage.

VICE-CHANCELLOR EMERY, New Jersey: Insanity of the wife.

CHARLES THADDEUS TERRY, New York: I see no argument except the strongly legal argument of the invalidity of the contract which he adduces to make insanity a ground for annulment which would not equally persuade us to make it a ground for divorce *a vinculo:* and I am heartily in accord with the suggestion made by the Chairman that the remedy which the gentleman from North

Carolina, perhaps because of his modesty, would not suggest is to leave the parties where the courts find them. If there is violent insanity leading to abuse, or threats, or probable injury, there is a remedy for that, and not this remedy. And apart from that, I see no difference between the case where one of the spouses is insane and needs assistance and nursing, and help and service, and the case where one of them is a confirmed invalid for years, and then more than at any other time or under any other circumstances needs the nursing and help and assistance of the other. Therefore, Mr. Chairman, I am heartily in favor at least of the amendment suggested.

The PRESIDENT: The question now is upon the amendment, which is to strike out the words "or at the suit of the committee of the lunatic;" are you ready for the question?

The question being upon the amendment as stated by the Chair, it was lost.

The PRESIDENT: The question now arises upon the adoption of paragraph e as reported by the Committee.

The question being as stated by the Chair, it was carried.

WALTER GEORGE SMITH, Pennsylvania: I now move the adoption of paragraph f.

Duly seconded.

The Secretary then read paragraph f, as follows:

f. At the suit of the wife when she was under the age of sixteen years at the time of the marriage, unless such marriage be confirmed by her after arriving at such age.

ERNEST MERTON, Wisconsin: I move to strike out the word "sixteen," and substitute the word "eighteen," and I do it for this reason: there is not a court in the land that upholds an ordinary contract of a person under twenty-one years of age, unless it is for necessaries. Here you go to the most solemn of contracts and say that unless a child was under the age of sixteen, she cannot disaffirm her contract, or go into court and have that contract annulled. For that reason, I suggest that the woman be at least eighteen years of age instead of sixteen, because it is a matter that will affect all her life, and not only her life, but the community in which she lives, and the State in which she lives. As a matter of fact, a girl under eighteen is too young to say whether it is right or wrong, and ought not to be permitted to marry unless there is the consent of father or guardian. You say by this declaration that the most solemn contract she ever can think of during her life she cannot disaffirm unless she enters into it before the is sixteen years of age.

Amendment duly seconded.

REV. A. J. D. HAUPT, Minnesota: This matter was brought before the Committee yesterday afternoon by the Minnesota Commissioner. In the State of Minnesota our age for marriage is eighteen for the female and twenty-one for the male, and we feel exactly as has been expressed, that as this matter, going forth from this Congress the age in f and g should be changed to eighteen and twenty-one. It must be remembered, however, that this is only a recommendation; this is not a code that is binding on everyone of the States, but, as has already been said this afternoon, on this floor, this code must be adapted to the several States and the several codes as they now exist. The Commissioners from Minnesota will certainly report to their Legislature next January the ages of eighteen and twenty-one, and not the ages of sixteen and eighteen, as here recommended. On the contrary, we have learned that there are States that have an age very much lower than this; in fact, some possibly have no particular age mentioned at all; and it is therefore an effort to raise the age of some of those other States, and to recommend that they pass some law in regard to this matter fixing the ages recommended by the Committee.

FRANK H. KERR, Ohio: I would favor the amendment, for the reason that, as it stands, this paragraph has no application to Ohio at all. In Ohio, a male under eighteen years or a female under sixteen years is not allowed to marry at all. I think that is the proper statute, too. Even the parents cannot give consent to marriage under those ages. If the gentleman from the opposite side of the house wants to raise the age, I am in favor of the amendment, for the reason that it would have some application to our State.

TALCOTT H. RUSSELL, Connecticut: Is not that altogether a question that applies to Minnesota? I presume a woman is perhaps too young to marry under eighteen in that State, while down in Louisiana she would be considered passeé, an old maid, at that age. It seems to me if this Congress should recommend that a uniform law should make the age eighteen, it would be ridiculous in some States, whereas it would be perfectly proper in Minnesota.

VICE-CHANCELLOR EMERY, New Jersey: I think the note which has been added carries out the idea of my friend from Connecticut. It says, "Each State is at liberty to reduce or increase the same, or change the age of consent, as its citizens may deem advisable." I only rise to say a word in this connection. These clauses making the ages of consent as one of the conditions of declaring marriages void were put in because in a great many of the States they are adopted, and the only difference is as to the age. Most of the States have adopted the general rule that a male at

twenty-one and a female at eighteen could marry without the consent of parents or guardian. Very few of the States, and I doubt whether any of them declare that the marriages under that age are void. They impose penalties on the officers who perform the marriage. They require the parties who present themselves for the ceremony to make affidavits to their age; they prescribe the penalties for perjury. But none of the States, or but few of them, at any rate, declare that marriage at less than eighteen for a woman and under twenty-one for a man is void.

Now, the situation in reference to fixing the ages of marriage is this: In this country we have adopted, not only as the general rule for the courts, but also the rules that are fixed by statutes an age that is much less than in the European countries, the older countries. There, twenty-five is the age for the male. But it has always been the American idea in the development of this country that early marriages were to be encouraged. That is considered as one of the foundations of the State.

Now, to carry out that view, the general term fixed is twenty-one years for the male and eighteen for the female without requiring the consent of guardians; but none of the States declare that a marriage at less than that age shall be void, and few of them go lower than the term of sixteen. The reason is this, the exceptional cases that require the application of laws to make them void depend on the exceptional development of the parties. Sometimes it is territorial or climatic, sometimes it is purely personal; and the old common law doctrine did not fix absolutely a limit, except at the ages of fourteen and twelve. They said, at above twelve and above fourteen, the respective ages of puberty in each sex, we will not inquire into the question; but below those ages we will inquire into the condition of each case, as to whether it was valid or not; but they did not undertake to say that it should be void below a certain age. Now, the age of sixteen is fixed in most of the States for a woman, and for this reason, that in the bulk of the States, below that age, no girl can give the physical consent; and that is the reason for fixing the age at sixteen. If you fix eighteen, and say that no marriage below eighteen is good, you cut off those States in which there is a large foreign immigration. Why the bulk of Italian girls are married before eighteen, a great many of them certainly. They have the consent of their guardians, and their parents arrange their marriage. So, in many other classes. When you come to fix the time it would be impracticable, I think, to fix it as high as eighteen, or higher than sixteen. If there should be in any State circumstances existing which makes it safe, so far as that State is concerned, to raise the standard to eighteen, then that State may do so. This is, to a certain extent, only tentative, or suggestive. It was inserted

because it was thought to be in the interest of the public that there should be a limit at which the courts might say to the people that marriages below that age may be declared void by either party.

ERNEST MERTON, Wisconsin: I hear very much said here with regard to leaving it to the States for each State to determine. This is the third or fourth time I have heard it to-day. I supposed that we met here for the purpose of getting into shape a divorce law that may be uniform throughout the several States of this Union. If we are going to leave every question to the several States, then I say we have wasted our time and our money and our brains in coming here. We suggest a law, but it is left to the States to determine whether they want it or not. I supposed we were going to agree upon a law that might be a benefit to us as a nation, and as a people, and that each man could go home and go to his Legislature, and urge with all the powers within him to have that law become a law of that State, so that we might have uniformity of divorce laws in this nation of ours. I therefore say it does not strike me with a great deal of force, but rather weakness, when I am told that a thing ought to be left to the Legislature for each State to determine for itself. I say, and I say it candidly, that there is not a contract more solemn, and that ought to be thought of more highly than that of entering into the intermarriage of races. When you say a minor girl of sixteen or eighteen, who cannot make a contract except for absolute necessaries, may make a contract of marriage, upon whose offspring a nation may have to rely, I say we are out West put in a position of going backward instead of forward. I do not care what the Italians do, or other classes; we are Americans, and we as Americans ought to have a uniform divorce law, and I say that a girl of sixteen years of age is not competent to judge, and ought not to be permitted to marry.

SENECA N. TAYLOR, Missouri: I rise to ask a question of the gentleman from Ohio, and that is whether the marriage of a girl at the age of sixteen in his State is made void.

FRANK H. KERR, Ohio: It is made void.

SENECA N. TAYLOR, Missouri: Absolutely void?

FRANK H. KERR, Ohio: Unless by the consent of the parents or guardian.

SENECA N. TAYLOR, Missouri: The marriage would be valid if they gave their consent?

FRANK H. KERR, Ohio: Yes.

SENECA N. TAYLOR, Missouri: Do I understand that your State declares it absolutely void without that consent?

FRANK H. KERR, Ohio: Oh, no, not necessarily void.

SENECA N. TAYLOR, Missouri: I would like to ask the gentleman from Wisconsin whether his State provides that if a girl under the age of sixteen marries, the marriage is absolutely void?

ERNEST MERTON, Wisconsin: No; she may bring her action to avoid it under the age of eighteen.

FRANK H. KERR, Ohio: I wish to correct my statement; I did not just understand the question; the marriage of a girl under the age of sixteen is voidable, not void.

MRS. RACHEL SIEGEL, Utah: I would like to say that I feel this Congress is more for the benefit of women than for men, because perhaps men are more able to take care of themselves as such; I want to make our foreign population American, and we can only do so by saying just as I think that the age of sixteen is really a proper age, because we must consider the foreign element that is brought into America; and in most States you will find the age of sixteen is the age of consent, and I think that a woman with the judgment of her parents is fully capable of judging and determining marriage at that age.

CHARLES F. LIBBY, Maine: I only want to add a word, and say that the Committee in reporting this bill have not undertaken to say what additional restrictions may be placed by the States. They have simply said that the minimum of restrictions shall be so and so that they recommend. I think that answers the gentleman on my right. The States, if they please, may reduce the number of causes for divorce; they may increase the age of consent; but our recommendation is that they should not reduce it beyond a certain point. This is the recommendation of the Committee, and I think it ought to be borne in mind throughout this discussion. We present a minimum, not a maximum, and we are leaving the States to increase the restrictions as they may see fit.

The question being upon the amendment to increase the age from sixteen to eighteen, it was lost.

The question being upon the adoption of paragraph f, it was agreed to.

WALTER GEORGE SMITH, Pennsylvania: I now move the adoption of paragraph g.

Duly seconded.

The Secretary then read paragraph g, as follows:

g. At the suit of the husband when he was under the age of eighteen at the time of the marriage, unless such marriage be confirmed by him after arriving at such age.

The question being upon the adoption of paragraph g as read, it was agreed to.

WALTER GEORGE SMITH, Pennsylvania: I now move the adoption of Section I.

The PRESIDENT: The Secretary will call the roll of the States on the whole Article.

PRESIDENT WARREN, South Dakota: Is a question in order? Does the note at the foot of the article go with it, or has it any force whatever as a deliverance of this body?

JOHN C. RICHBERG, Illinois: No; these notes are put here rather to explain the action of the Committee in approving these paragraphs.

The PRESIDENT: The motion to adopt includes Article I, which ends with paragraph g, without the note.

PRESIDENT WARREN, South Dakota: Then it should rather increase the age of consent to carry the judgment of this body, though that point has not been distinctly passed upon. But, concerning paragraph c, why at the suit of either party? Why not simply at the suit of the injured party?

WALTER GEORGE SMITH, Pennsylvania: You would not have a bigamous marriage stand under any circumstances, would you?

PRESIDENT WARREN, South Dakota: It looks to me as though the party who fraudulently contracted the marriage ought not to be able to get away from it, or to bring suit.

FRANK H. KERR, Ohio: I want to say in respect to paragraph e: In Ohio we have no such thing as a Committee; the name is guardian.

WALTER GEORGE SMITH, Pennsylvania: You would use the word guardian when you pass the statute in Ohio. It is simply impossible for us, as I endeavored to explain this morning in reference to some of the paragraphs, to use technical language that will be practicable in each State. In Massachusetts the name will be conservator; my friend from Illinois and some other States will put it committee, as in Pennsylvania; in some States it will be guardian, as perhaps in Ohio.

BENJAMIN H. NIELDS, Delaware: I think the words "or at the suit of the legal representative of the lunatic" would cover all that is meant by trustee, conservator, committee or guardian.

WALTER GEORGE SMITH, Pennsylvania: The term "legal representative" is very generally understood to be the executor or administrator.

BENJAMIN H. NIELDS, Delaware: The trustee of the lunatic is surely his legal representative.

WALTER GEORGE SMITH, Pennsylvania: Of his estate, without question.

BENJAMIN H. NIELDS, Delaware: I have been trustee for about eighteen years, and I know that he is the legal representative of the lunatic.

WALTER GEORGE SMITH, Pennsylvania: In Delaware.

BENJAMIN H. NIELDS, Delaware: And it is generally so understood.

WALTER GEORGE SMITH, Pennsylvania: In Pennsylvania he is committee.

The PRESIDENT: There is work enough before us; if the gentleman wants to move an amendment, he may do so.

BENJAMIN H. NIELDS, Delaware: I move instead of "committee" to insert the word "legal representative," and ask the Committee on Resolutions to allow that amendment.

The PRESIDENT: Will the Committee on Resolutions accept the substitution?

WALTER GEORGE SMITH, Chairman, Pennsylvania: No, sir.

The PRESIDENT: The Committee declines; and if the Congress is ready for the question, we will call the roll on the adoption of the Article.

The Secretary then proceeded to call the roll, and on reaching Massachusetts, and the delegate from that State, the Rev. Dr. Samuel W. Dike, not voting, the Secretary inquired whether he was not still a delegate from that State; that his name is on the roll as a delegate, and he has been so treated; that Dr. Dike was a delegate to the Congress appointed at the last meeting, and this being merely an adjourned meeting, his representation still continues.

REV. DR. SAMUEL W. DIKE, Massachusetts: I rise to make an explanation. I was asked by the Governor of Massachusetts to serve

in the absence of Professor Gardner. He has declined reappointment for this Congress, and Professor Ames, of Harvard, has been appointed. I have not been appointed, and I should not consider myself as a legal delegate from Massachusetts. Professor Ames, Dean of the Harvard Law School, will be here early in the morning to represent the State.

Upon New York being called, Mr. Terry, the delegate present from that State, said:

It is with a great deal of diffidence that I vote upon this article in the absence of Dean Huffcut, who is a member of the Committee on Resolutions, and whose mind, I suppose, would be unalterably for the resolutions as reported. I am, however, left in a position where I must vote no on paragraphs a, b and e and aye on the other paragraphs.

Mr. Merton, of Wisconsin, recorded the vote of that State no on a, c, f and g, and aye on the others.

The roll call being completed, the Secretary reported 17 States voting aye and 2 qualified noes, whereupon the President declared the article adopted.

WALTER GEORGE SMITH, Chairman, Pennsylvania: I now move the adoption of Section 2, which is a definition of the different kinds of divorce. Criticism has been made on division into articles, and then into sections. The sections are numbered consecutively. The Committee decided that when the draft was sent out, the articles would be abolished, and the statute would be numbered consecutively in sections. For convenience of consideration, however, at present, the titles are retained.

The motion was duly seconded, whereupon the Secretary read section 2, as follows:

Article II.—Divorce.

Section 2. Kinds of.

Divorce shall be of two kinds:

a. Divorce from the bonds of matrimony, or divorce *a vinculo matrimonii.*

b. Divorce from bed and board, or divorce *a mensa et thoro.*

The Secretary then proceeded to call the roll of the States upon the motion, and upon reaching Michigan, Mr. Sloman said:

"I vote aye, but I ask the personal privilege of stating that of course this represents my individual vote. The Chairman of the delegation is not here, nor is the other member, and I would not like to foreclose them. This is my individual vote as representing Michigan."

WALTER GEORGE SMITH, Pennsylvania: The absentees have already voted on this question at a prior meeting of the Congress, and there was no opposition.

The PRESIDENT: It may be understood that the gentleman votes for his State. If the other representatives are not here, there is no help for it that I can see.

ADOLPH SLOMAN, Michigan: The other representatives might claim, however, that the vote was not authorized.

The PRESIDENT: The delegate from Michigan can make any explanations he chooses to make.

The roll call was then completed, and the Secretary announced 19 ayes and no noes, whereupon the President declared section 2 adopted.

WALTER GEORGE SMITH, Chairman, Pennsylvania: In pursuance of my official duty, I now proceed to move the adoption of section 3, but in order that it may be considered paragraph by paragraph, we will pursue the same couse, if the Chair approves, as in the preceding article. I therefore move at present that paragraph a be approved by a viva voce vote.

Duly seconded.

The Secretary then read as follows:

Article III.—Divorce *a Vinculo.*

Section 3. Causes for.

The causes for divorce from the bonds of matrimony shall be:

a. Adultery.

The question being upon the adoption of this paragraph, it was carried.

WALTER GEORGE SMITH, Pennsylvania: I now move the adoption of paragraph b.

Duly seconded.

The Secretary then real paragraph b, as follows:

b. Bigamy, at the suit of the innocent and injured party to the first marriage.

The question being upon the adoption of paragraph b, it was agreed to.

WALTER GEORGE SMITH, Pennsylvania: I now move the adoption of paragraph c.

Duly seconded.

The Secretary then read paragraph c, as follows:

c. Conviction and sentence for crime by a competent court having jurisdiction, followed by a continuous inprisonment for at least two years, or in the case of indeterminate sentence, for at least one year: Provided, That such conviction has been the result of trial in some one of the States of the United States, or in a Federal Court, or in some one of the territories, possessions or courts subject to the jurisdiction of the United States, or in some foreign country granting a trial by jury, followed by an equally long term of imprisonment.

REV. A. J. D. HAUPT, Minnesota: I would like to ask for information why the time limit has been changed from two years in case of continuous imprisonment to one year in the case of an indeterminate sentence?

WALTER GEORGE SMITH, Pennsylvania: By reason of the vote of the Congress at Washington:

ADOLPH SLOMAN, Michigan: I would like to ask of the Chairman of the Committee on Resolutions within what time may the party be entitled to bring the action for divorce? Let us illustrate: The wife may not know of the conviction of a husband in another State, or it may be that with knowledge of the conviction of the husband the wife continues to live with the husband when she would be entitled to obtain a divorce, may be living with him two or three or five or ten years after this conviction, and then file a bill on the ground that at one time he had been convicted. There ought to be a limit of time in which the action of divorce may be taken.

WALTER GEORGE SMITH, Pennsylvania: In that case there would be a condonation, and of course no action for divorce would lie.

VICE-CHANCELLOR EMERY, New Jersey: It was necessary to add a general clause in the statute in reference to that question of condonation, and that will be found on page 6 in section 5, under the heading of "Bars to relief," providing that no decree for divorce shall be granted if the plaintiff has condoned the offense. If any offense has been condoned, it no longer remains a cause for relief.

The question then being upon the adoption of paragraph c, it was carried.

WALTER GEORGE SMITH, Pennsylvania: I now move the adoption of paragraph d.

Duly seconded.

The Secretary then read paragraph d, as follows:

d. Extreme cruelty, on the part of either husband or wife, such as endanger the life or health of the other party and render cohabitation unsafe.

REV. DR. HENRY COLLIN MINTON, New Jersey: I have been greatly interested in the explanation made by the Chairman of the Committee leading to the omission of the words in the original draft of this section; and in comparing what he said concerning this with what he said concerning paragraph b, at the top of page 6, under the head of divorce *a mensa*. To be sure, gentlemen of the law, you will understand that a lay mind speaks with great timidity, and usually only asks for information. I apprehend that our work here ought not to be so technical as to be beyond the understanding of the ordinary intelligent lay mind. I understand that cruelty is a generic term, and is to be interpreted under the statute by the court. Is cruelty in the law only physical, or is there such a thing as psychological cruelty before the law? I think that our learned friend, Vice-Chancellor Emery, told us in the Congress at Washington of his experience in divorce cases of one instance where there was never a single act of cruelty in any physical way whatever, and yet, by a species of persistent and diabolical cruelty, I think he said, he gave judgment in favor of the divorce, if it was in his jurisdiction. I only inquire, Mr. President, and learned gentlemen of the law, about this, and I wonder if the term cruelty is to be construed by the courts so comprehensively as to embrace far more than mere physical abuse? If so, then why may it not be so construed in the other instance? This is now under the eye of the Congress, and I should like information as to how much discretion a court has under the statutes in our States, as they now are, to define cruelty.

WALTER GEORGE SMITH, Pennsylvania: I would like to ask my friend, the Vice Chancellor, to answer the question of his colleague; and my reason for laying that burden upon him is because, from his experience, he will be able to give the gentleman the fullest information. I ask him to speak on behalf of the Committee.

VICE CHANCELLOR EMERY, New Jersey: I dislike to be on the floor of this Congress so often; but it may be worth while to explain to laymen what is already well understood by lawyers. All of the States allow a divorce of some kind, either absolute or from bed and board, for cruelty, except, of course, the State of South Carolina. Long before the foundation of any of our State governments there was a court from which we have derived the fundamental principles of law, which has exercised the power of granting divorces for cruelty, the Ecclesiastical Courts of England. In many of the States, when they come to give their Legislature power to grant divorces, but a single word was used—divorce may be granted for cruelty; always qualified, however, by the words "extreme," "intolerable," or some such word, which would indicate that they meant the cruelty to be great—extreme cruelty, intolerable cruelty, or such like

words. Now, in a great many of the States that is the sole definition—extreme cruelty. The consequence is that in the considerable interval of time that has elapsed since each State has been building up its system of construction by the courts, the courts of nearly every State, where that is the only language employed, have defined what shall be extreme cruelty. Take an illustration: In my own State extreme cruelty denotes that conduct, whether physical or other, the result of which is the destruction of the health, the endangering of the health or life of the other party. That may be done by a refinement of cruelty that does not show itself in acts. In the case that my colleague referred to, it showed itself by making charges of such a character and at such times that it broke down the woman. The final test was, Was the health or life endangered so as to render further cohabitation unsafe with a husband who acted in that way? That is the general line of decisions where the words extreme cruelty alone are used. It has become quite common, especially in States whose legislation has come later by reason of the later formation of the States, not to leave to the construction of courts which were then first constituted the definition of those terms; and in a great many States they have gone further, and have defined what the cruel act should be. In all of the States where any definition has been attempted they include such acts as to endanger the life of health of the other party; and that would be included without the definition. That is what is meant by extreme cruelty; and each State has already, perhaps, by the decisions of its own courts, built up its system of defining what shall be extreme cruelty.

You will bear in mind that that relates only to conduct which has the effect of endangering life or health. Some States are more liberal, and go further, and say "such indignities to the person, threats and acts of abuse as to render the condition of the other intolerable and life burdensome, and to force such party to separate from the other and to live apart." That was the clause which was stricken out, because it is not adopted in all States; and wherever it has been put in it has been considered as an extension of the causes beyond what would be taken as the usual ordinary definition, either by courts or by statutes, of what extreme cruelty is. I think it would perhaps be unsafe for the Congress to go further in the way of definition than this section has gone. And, as an illustration, in enforcement of that idea, I will make one statement as to what is really the division of opinion in the minds of judges who have to decide the question of what is extreme cruelty that will justify dissolution of a marriage relation. And on that question the ecclesiastical law judges differ. Some say that extreme cruelty is conduct of that kind which virtually makes the relation into which the parties have entered absolutely impossible of fulfillment. Other

judges have said it only means that which results from the application of physical force. And therefore, accordingly as one or the other view has prevailed, you will find in your different States that which may be described as the extreme cruelty endangering life or health. So that definition given here seems to go as far as it was safe to go in the way of a statute.

F. H. BUSBEE, North Carolina: One question. I would like to know whether there is any distinction in the reports between the words extreme cruelty and intolerable cruelty? The Congress at Washington advised the word intolerable; and I suppose the reason why that word is not incorporated in paragraph d is because the word intolerable is used in the second section, which was afterwards stricken out. What we want is the better judicial construction, whether the word extreme or intolerable is better.

VICE-CHANCELLOR EMERY, New Jersey: I am inclined to think the word extreme is used in most cases; but you will find extreme cruelty defined as that cruelty which cannot be borne; that is intolerable, in the Latin phrase. Extreme is more generally used, both in statutes and opinions. I doubt, however, whether any difference will be attached to the meaning of the two words.

PERCY WERNER, Missouri: I move to amend paragraph d, by the retention of the words which have been stricken out.

WALTER GEORGE SMITH, Pennsylvania: I rise to a point of order, and my opinion is that the gentleman will have to move to reconsider the resolution adopted by the Congress in Washington setting out the causes for divorce.

PERCY WERNER, Missouri: If it is necessary to re-commit this are erased were the words which were originally adopted.

WALTER GEORGE SMITH, Pennsylvania: My friend will be entirely in order if he wishes, and if the Congress wishes, to take the matter up again, though I earnestly hope they will not.

PERCY WERNER, Missouri: If it is necessary to re-commit this matter to the Committee on Resolutions, that will be my motion.

The PRESIDENT: The point of order has been raised to the effect that it is out of order now to move to amend by adding to the motion of the Chairman of Committee the words at the bottom of page 4, and continued on page 5, namely: "or such indignities to the person, threats and acts of abuse, as to render the condition of the other party intolerable and life burdensome, and to force such party to separate from the other and to live apart."

Is that amendment seconded?

SENECA N. TAYLOR, Missouri: I second the motion to amend, in order that we may have a full discussion.

The PRESIDENT: The amendment is seconded, and it is before the House.

WALTER GEORGE SMITH, Pennsylvania: I make my point of order.

The PRESIDENT: The point is overruled, and the motion to amend is allowed.

WALTER GEORGE SMITH, Pennsylvania: I shall submit with all loyalty to the ruling of the Chair. If the Chair will permit an explanation from the Committee, his ruling is not the ruling of the Committee. As I explained this morning, the Committee was of opinion, on motion of Mr. Siddons, of the District of Columbia, whose absence I keenly regret, and more so under the present circumstances, after a full debate at St. Paul, and a further debate here, on coming here largely for the purpose of presenting the matter—the opinion of the Committee was that we would be violating the resolution of the Congress by adding a cause to those that had been enumerated. I merely make this statement that the Congress may have a clear-cut understanding. The presiding officer has overruled the point which I felt compelled to make as a representative of the Committee. Therefore, the Congress must follow the interpretation that he gives, that this is not an additional cause.

The PRESIDENT: I think the Committee were entirely right. They were acting as the agent of the Congress with certain defined authority, and they followed it. In doing so, they acted exactly within the line of that authority which had been given to them. Now the question comes up before the Congress, and if the body itself should determine to add to the causes for divorce, I see no reason why they are not able to do it.

WALTER GEORGE SMITH, Pennsylvania: May I have just one other word. I agree entirely with everything the President has said. There is no difference of opinion between us at all; but it would seem to me, with the profoundest deference, that my point is still well taken, because my friend is endeavoring to add another cause of divorce by a proviso to an existing cause. I appeal to the experience of those who are best able to say whether on the statute books of Pennsylvania this proviso is not set out as a separate cause. I appeal to the experience of other gentlemen of the Committee, who are just fresh from the debates whether this is not another cause. I think my friend is out of order parliamentarily, if there is such an

adverb, because he should move that there be added another paragraph as paragraph g, which would be "such indignities to the person, threats or acts of abuse, as to render the condition of the other party intolerable and life burdensome, and to force such party to separate from the other and to live apart."

Then we would know where we stood, and the matter would come up in the regular way. And if I may still save time by continuing what I have to say, the Congress will bear in mind that the reason that it enumerated these causes was because they were causes in the great majority of the States. Now, the proposed paragraph contains what is not one of the causes in the great majority of the States. My friend should sustain his argument in favor of it now by pointing out in what proportion of the States it is a cause for divorce, so that we may justly represent the communities from which we came.

The PRESIDENT: Now, that the explanation has been made, there is nothing before the Congress except the amendment.

SENECA N. TAYLOR, Missouri: In the State of Missouri what is proposed as an amendment is an independent, distinct ground of divorce. The two grounds that are undertaken to be blended here are given in our statute as "guilty of such cruel and barbarous treatment as to endanger the life of the other," and "offered such indignities to the other as to render his or her condition intolerable." Now this amendment really gives to that paragraph a new cause of divorce. If we added another cause, we would say that a certain number of States in the Union have these causes. Yet it was the almost universal sentiment—I think it was the universal sentiment of the delegates in Congress in grouping these causes here that we were not saying that they were causes which ought to exist; we merely said historically they were causes existing in a majority of the States. I have taken occasion to investigate this matter in regard to the acts that use these words, "indignities such as render the condition intolerable," and they are comparatively few, very few. I therefore, while I seconded the motion to get the matter before the House, am opposed to the amendment.

PERCY WERNER: In relation to the two points made in this amendment, if the position taken by the Chairman of the Committee on Resolutions is correct, that the Committee was not empowered to add any to the causes adopted, he overlooked the fact that at a former meeting they have been inconsistent, because while it is true that at the former meeting—

The PRESIDENT: I do not think it important at all to discuss the question as to the action of the Committee; the real question is to the propriety of adopting this amendment.

PERCY WERNER, Missouri: I want to say that in causes for divorce *a mensa* they have included this as a cause, although intolerable cruelty was the only cause assigned in the resolutions adopted at Washington.

WALTER GEORGE SMITH, Pennsylvania: Might I interrupt the gentleman to remind him that the Committee called the attention of the Congress to that fact in the report this morning, and it was carefully explained why it was done.

PERCEY WERNER: Missouri: In relation to the second point made by my colleague, that it ought to be stated separately because it is so stated in some States that have adopted the same form of expression, I remind him that these two causes are both included in paragraph d in relation to divorces *a mensa*, extreme cruelty and indignities; so that there seems to be nothing sound in the contention that they ought to be separated, because the Committee themselves have pursued that course in the very next section. The matter really comes down to the question whether we want to add this as a ground for divorce. In view of the explanation made by the Vice-Chancellor so lucidly, I am convinced that this ought to be added as a distinct ground for divorce *a vinculo*, and that is the object of my amendment.

PRESIDENT WARREN, South Dakota: I simply want to say that I was very glad to see that it had been omitted by the Committee at their last session. Such observation as I have been able to give this matter and the workings of divorce laws, leads me to feel that, under cover of these easy-going phrases, "indignities," "threats," "acts of abuse, so as to render life burdensome," divorces *a vinculo*, are obtained that are travesties of justice, and a fraud on society.

AMASA M. EATON, Rhode Island: I coincide entirely with the remarks of the gentleman who has just taken his seat. It seems to me it would be a great mistake to add those words, and therefore they should not be added. We are trying to act in the interests of harmony and uniformity among the States. Now it is a convincing reason, to my mind, that the causes here enumerated are not included in the majority of the States, and therefore should not be included by us.

I hope the motion now made will not prevail.

JOHN C. RICHBERG, Illinois: I simply desire to call the attention of the members here, as the gentleman from Rhode Island has just said, to the fact that one of the objects of framing this code is to secure its adoption in the different States of the Union, and in the interests of uniformity. The Committee has presented a report by which they showed that 90 per cent. of the States of the Union, or forty out of forty-five States, are in accord upon these causes for divorce that have been recommended by the Committee. This would give another cause, the seventh, which only prevails in a minority of the States. We have sought to incorporate such causes as are common to at least three-fourth of the States, and I am within the mark when I say close to ninety per cent.

The PRESIDENT: How many of the States have the word "threats," because it seems to me to be a very vague and inexact term.

JOHN C. RICHBERG, Illinois: Only a few of them. The causes we have enumerated are causes in the State of Illinois, and our definitions are exceedingly rigid. No divorce is allowed in the State of Illinois, and never has been, on the ground of cruelty. Not only must it be extreme cruelty, but it must be repeated—"extreme and repeated cruelty."

PERCY WERNER, Missouri: Physical?

JOHN C. RICHBERG, Illinois: Physical, physical violence, indignities to the person, and so on—under those loose phrases a divorce cannot be obtained. Of course, if a party has committed perjury that is an entirely different question. Now, this would add another cause; and while of itself such indignities might be offered that would be worse for the woman to bear than even blows, yet at the same time it opens the door so that under those general phrases you could obtain almost any kind of what we consider loose divorces. For that reason, and in the interest of uniformity, and in order that this Congress may have it go out that eighty or ninety per cent. of the States have already the causes contained in this statute, and obliterate the other causes so as to obtain uniformity, I am heartily opposed to the present motion.

ADOLPH SLOMAN, Michigan: I was not present at Washington, but I have read the proceedings, and I find that when fraud as a ground of divorce was under consideration, a somewhat extended discussion took place as to what fraud meant. It was finally determined that that term might best be left to be determined by the court in each individual case, according to the peculiar facts of that case. When the question of insanity as another ground came up

to-day, I sought to have that defined, and the Congress said no, better leave the general cause and the courts will define it, and see that it will only be allowed in a proper case. The distinguished Vice-Chancellor here has explained what the term "extreme cruelty" means, that it is not confined to blows nor bodily injuries, but there may be that refined species of indignity offered to the wife that would come within the term extreme cruelty; and I think the very lucid explanation he has given of the construction placed upon the words in his court is quite general in the courts of the United States. In my State it is not necessary to inflict a blow on the wife that does her bodily hurt; a charge of unchastity is an indignity beyond all; it is extreme cruelty, and has been so decided. I sincerely hope that this amendment will not carry.

The question being upon the adoption of the proposed amendment to paragraph d, it was lost.

The question being upon the adoption of paragraph d as reported, it was carried.

WALTER GEORGE SMITH, Pennsylvania: I now move the adoption of Paragraph e.

Duly seconded.

The Secretary then read paragraph e, as follows:

e. Wilful desertion for two years.

The question being upon the adoption of paragraph e, it was carried.

WALTER GEORGE SMITH, Pennsylvania: I move the adoption of paragraph f.

Duly seconded.

The Secretary then read paragraph f, as follows:

f. Habitual drunkenness for two years.

The question being upon the adoption of paragraph f, it was agreed to.

WALTER GEORGE SMITH, Pennsylvania: I now move the adoption of section 3, which has been approved by paragraphs.

The PRESIDENT: The Secretary will please call the roll of the States.

PRESIDENT WARREN, South Dakota: I simply want to say one word. In section 3, Paragraph b, only the innocent and injured party to the first marriage can bring suit, whereas in section 1, paragraph c, either party to the second marriage can bring suit.

VICE-CHANCELLOR EMERY, New Jersey: The one case is an annulment, and the other is a divorce.

PRESIDENT WARREN, South Dakota: Either party may seek annulment in the case of bigamy, but only the injured party to the first marriage may seek divorce. That seems to be an inconsistency.

WALTER GEORGE SMITH, Pennsylvania: We have provided for annulment when such marriage was contracted while either of the parties thereto had a husband or wife living, at the suit of either party. Obviously, that is a cause for annulment, because there never was a marriage; it is void, null. In the other case—

VICE-CHANCELLOR EMERY, New Jersey: Perhaps I can give the explanation.

WALTER GEORGE SMITH, Pennsylvania: I had not reached the second case, but I will yield to my friend, the Vice-Chancellor.

VICE-CHANCELLOR EMERY, New Jersey: If you will look at section 3, which gives the causes for divorce *a vinculo*, you find that they shall be, "a, adultery; b, bigamy, at the suit of the innocent and injured party to the first marriage." Now, that applies to a case where the second marriage took place but no cohabitation after it, or where there is no proof of cohabitation. If there were cohabitation, the crime of adultery would be made out. The question is as to whether the mere bigamous marriage, where no cohabitation took place, should entitle the injured party to the first marriage to a divorce. The marriage itself may there be set aside by the injured party to the first marriage, where there is a bigamous marriage afterwards. That is the difference between adultery and bigamy; if there is cohabitation after a bigamous marriage it is adultery. That is the reason there are two classes, because the case has occurred where the charge of adultery is made, and proof is made of a conviction for bigamy, but no proof of cohabitation through the impossibility of proof of adulterous connection.

PRESIDENT WARREN, South Dakota: Under your interpretation, there is no need to prove cohabitation in the second marriage; but you have not only to prove that there was a marriage but afterwards prove cohabitation in order to prove adultery.

The PRESIDENT: The question has been asked and answered; the Secretary will proceed to call the roll on the adoption of section 3.

The Secretary called the roll, and when New York was reached, Mr. Terry voted aye on paragraph a, and on b, c, d, e and f, no.

When North Dakota was reached, Bishop Shanley said:

Before North Dakota casts its vote, I ask the privilege of a little explanation. Unfortunately, I am the only delegate from North Dakota present at this session of the Congress; and as most of the

delegates here present were at Washington, they know that I am a Catholic Bishop. As a Catholic Bishop, I must follow my conscience, and vote absolutely no. I can recognize no cause for an absolute divorce. That is my personal conviction and my personal vote. On the North Dakota delegation, however, there are five members, four of them are not here. I presume, were they here, one of them would cast the vote of the State; and let me do a little hair splitting, and, as it were, cast myself into the personalities of the four absent members, and vote for North Dakota aye. I know that is the expression of the State of North Dakota, although it does great violence to my conscience to vote at all in favor of absolute divorce.

When South Dakota was reached, President Warren said:

I am not exactly in the position of Bishop Shanley, but I do not feel at all settled in my own mind as to the wisdom of causes other than the scriptural grounds, which I understand to be adultery. I hold in my hand a letter from Bishop Hare who has done more for such improvement as we have had in South Dakota in recent years than any one else, expressing his regret that he cannot come. If you will allow me to read it as expressing my own feeling as regards the practical and ideal. He says:

"My Dear Doctor Warren:

"I thank you very much for your letter in answer to mine. To my very great regret, I shall not be able to attend the meeting of the Committee. I hardly have the use of my eyes just at present, and have been able only to look over the proposed Uniform Statutes in a desultory way. I am, on the whole, in accord with the proposed Uniform Statutes, especially that regarding publicity and that concerning a decree *nisi*.

"In favoring the proposed statutes as a whole, I write as a citizen of the State, reserving, of course, my right to take very much higher ground as an officer of the Church and a teacher of morals and religion, holding, as I do, that the poet, the hymn writer and the preacher should aspire after the ideal, while the State must often lag behind.

Yours sincerely,

W. H. HARE."

The PRESIDENT: I do not understand what the vote of South Dakota is?

PRESIDENT WARREN, South Dakota: I vote with the majority.

Upon completion of the roll call, the Secretary announced that 17 States had voted aye, and 1 State no, as to paragraphs b, c, d, e and f; whereupon the President declared the section adopted.

Upon motion, adjourned.

SECOND DAY

Morning Session.

Wednesday, November 14, 1906.

The Congress re-assembled at 10 o'clock a. m., pursuant to adjournment, President Pennypacker in the Chair.

F. H. BUSBEE, North Carolina: I desire to call the attention of the delegate from Massachusetts to the fact that he inadvertently yesterday made an error in stating that he was not a delegate to the Convention. It appears on page 176 of the proceedings of the Convention at Washington that the Committee on Credentials reported that it had received from the Governor of Massachusetts the credentials of Rev. Dr. Samuel W. Dike as a delegate to this Congress, and his name was directed to be placed on the permanent roll.

The PRESIDENT: I understand that Dr. Dike's name does appear on the regular roll. The gentleman from Massachusetts has probably overlooked his authority. If you call his attention to it, I have no doubt it will be satisfactory to him, as I am sure it will be eminently satisfactory to the Congress.

The SECRETARY: The name of Dr. Dike is on the roll, has been on the roll, was called yesterday morning as being on the roll, and will remain there.

F. H. BUSBEE, North Carolina: But the gentleman objected yesterday when I called his attention to it.

WALTER GEORGE SMITH, Pennsylvania: When the adjournment was had we had reached Article IV, divorce *a mensa;* I will read Article IV for the information of the Congress:

Article IV.—Divorce *a mensa.*

Section 4. Causes for.

The causes for divorce from bed and board shall be:

a. Adultery.

b. Bigamy, at the suit of the innocent and injured party to the first marriage.

c. Conviction and sentence for crime by a competent court having jurisdiction, followed by a continuous imprisonment for at least

two years, or in the case of indeterminate sentence, for at least one year: Provided, That such conviction has been the result of trial in some one of the States of the United States, or in a Federal Court, or in some one of the territories, possessions or courts subject to the jurisdiction of the United States, or in some foreign country granting a trial by jury, followed by an equally long term of imprisonment.

d. Extreme cruelty, on the part of either husband or wife, such as to endanger the life or health of the other party and render cohabitation unsafe; or such indignities, threats or acts of abuse, as to render the condition of the other party intolerable and life burdensome, and to force such party to separate from the other and to live apart.

e. Wilful desertion for two years.

f. Habitual drunkenness for two years.

g. Hopeless insanity of the husband.

My attention was called yesterday by our friend, the delegate from Missouri, to the fact that there was an illogical arrangement of paragraph d; and the Congress decided that the second part of section d, "or such indignities, threats or acts of abuse as to render the condition of the other party intolerable," was a separate cause for divorce, and therefore should not be coupled in one section with extreme cruelty in divorce *a mensa*, even if retained there. As a mere matter of convenience of arrangement, I therefore will ask unanimous consent that paragraph d shall end with the word "unsafe;" in which case paragraph d would read as follows:

"d. Extreme cruelty, on the part of either husband or wife, such as to endanger the life or health of the other party and render cohabitation unsafe."

And then the next paragraph would be:

"e. Such indignities, threats or acts of abuse as to render the condition of the other party intolerable and life burdensome, and to force such party to separate from the other and to live apart."

This, of course, necessitates a change in the lettering of the following paragraphs. This is a mere matter of convenience of arrangement, and has nothing to do with the substance at all. In accordance with our practice of yesterday, I move that we consider these several paragraphs one at a time, and now make a formal motion for the adoption of the first, to wit:

The causes for divorce from bed and board shall be:

a. Adultery.

Duly seconded.

CHARLES THADDEUS TERRY, New York: I rise to a question of information, if the Committee will be good enough to answer. I

wish to inquire the reason for adding the clause in paragraph b "at the suit of the innocent and injured party to the first marriage," and omit it from paragraph a?

AMASA M. EATON, Rhode Island: I rise to a question of order; had we not better consider that when we reach paragraph b?

The PRESIDENT: The inquiry extends to the question why it is omitted from paragraph a, which therefore makes it relevant.

WALTER GEORGE SMITH, Pennsylvania: The point was not raised at the Committee's meeting, but I assume that when the single cause of adultery is stated that would mean adultery of either party, the suit being brought, of course, by the injured, not the guilty party; because, if it were brought by the guilty party, he would be estopped by his own wrong. While, of course, the single word standing alone, to the lay mind would require explanation, I think the sentiment of the Committee was along the line of precision, to make the meaning perfectly clear, just as in an analogous case later on we find habitual drunkenness for two years, and again wilful desertion for two years; the analogy is followed all the way through. We could undoubtedly take more words to explain our meaning; but to our apprehension it was obvious. It may be that I do not get the point, however, of my friend from New York.

CHARLES THADDEUS TERRY, New York: I am afraid I am dull about that, but my question was why it was omitted from paragraph a and included in paragraph b.

JOHN C. RICHBERG, Illinois: Does the gentleman want it in paragraph a? If he does, and will make a motion to that effect, I will second it.

CHARLES THADDEUS TERRY, New York: That was my question.

The PRESIDENT: The gentleman has put the question, and the Chairman of the Committee has answered it.

SENECA N. TAYLOR, Missouri: Under divorce *a vinculo*, it will be observed that the language is "bigamy, at the suit of the innocent and injured party to the first marriage;" and that same thing is followed in divorce *a mensa*. The real question which Mr. Terry puts is, why not say, where adultery is the cause, "at the suit of the innocent and injured party," as well as where bigamy is the cause? I hardly need say to as good a lawyer as Mr. Terry that that which the law absolutely implies is as much a part of a statute as that written in the statute. No doubt about that proposition.

CHARLES THADDEUS TERRY, New York: None whatever.

SENECA N. TAYLOR, Missouri: Now, when we start out with the proposition of adultery as the cause, it would be idle to assume it is not written in the statute "adultery of the party who has committed the offense." If the party who has committed the offense should go into Court and say, "I have committed that act and want a divorce," he would not succeed. Therefore, the act means at the suit of the innocent party, the party against whom the offense is committed. I see no reason why, therefore, it should be put in.

Now with regard to bigamy, I think there is a difference. Very frequently bigamy is committed by a man or woman innocently. The partner has been gone for years, and the party supposed him to be dead.

CHARLES THADDEUS TERRY, New York: Is that innocently in the eye of the law?

SENECA N. TAYLOR, Missouri; I will answer you.

The PRESIDENT: We are having a discussion on a matter which is not before us. A question was asked as to paragraph a, and it has been answered.

(Calls for the previous question.)

The PRESIDENT: The previous question is called for, which is on the adoption of paragraph a, and that which precedes it in section 4.

The question being as stated by the Chair, it was agreed to.

WALTER GEORGE SMITH, Pennsylvania: I move the adoption now of paragraph b.

Duly seconded.

The Secretary then read paragraph b, as follows:

b. Bigamy, at the suit of the innocent and injured party to the first marriage.

CHARLES THADDEUS TERRY, New York: I now renew my inquiry as to why the words "at the suit of the innocent and injured party to the first marriage" have been appended to bigamy as a cause under paragraph b, when they were omitted under the cause designated in paragraph a?

WALTER GEORGE SMITH, Chairman, Pennsylvania: As a matter of convenience, I will ask my friend, the delegate from Missouri, to continue his explanation, which was interrupted.

The PRESIDENT: The gentleman from Missouri will answer the question.

SENECA N. TAYLOR, Missouri: We often find in experience that a man or woman, having a marital partner still living, might be married again. Now, as I understand the significance of this paragraph, while no crime was intended, yet such party is in the wrong; and this language, if I understand it, means this—that the party who did not have a previous husband or wife, where bigamy occurs, may institute a suit either for annulment, or for separation from bed and board, or for absolute divorce; but the other party cannot; that is as I understood this when we prepared it.

The question being upon the adoption of paragraph b, it was carried.

WALTER GEORGE SMITH, Pennsylvania: I make the same motion with regard to paragraph c.

Duly seconded, and agreed to.

WALTER GEORGE SMITH: I now move the adoption of paragraph d as it has been revised by the Committee.

The Secretary then read paragraph d, as follows:

d. Extreme cruelty, on the part of either husband or wife, such as to endanger the life or health of the other party and render cohabitation unsafe.

PERCY WERNER, Missouri: I move to amend that paragraph by substituting the word "or" for the word "and" immediately before the word "render," so as to read:

"Extreme cruelty, on the part of either husband or wife, such as to endanger the life or health of the other party or render cohabitation unsafe."

Duly seconded.

PERCY WERNER, Missouri: I would like to explain my motion in this, that in the first place, by distinguishing between indignities and cruelty, we have already taken away from the courts, in large measure, the power to construe the word cruelty. When we again cut down cruelties to such a narrow meaning "as shall render cohabitation unsafe," we still further narrow that clause so that a man might amuse himself at every meal hurling plates at his con jugal partner, or even amuse himself firing bullets as near as he can come to her without hitting her and yet not render cohabitation unsafe. Therefore, I think it is a most dangerous and unwise limitation to put in the expression "extreme cruelty."

SENECA N. TAYLOR, Missouri: I seconded that amendment, because with the other change I think it is perhaps wise; it gives a little broader scope manifestly to the provision.

JOHN C. RIGHBERG, Illinois: I would like to make an inquiry whether the gentleman intends by that change to give an additional cause for divorce *a mensa*.

PERCY WERNER, Missouri: Oh, no; it is to prevent a too narrow construction of the expression "extreme cruelty."

The PRESIDENT: It makes a different interpretation of the meaning of the word "cruelty;" it makes it broader.

WALTER GEORGE SMITH, Pennsylvania: I would say to the Congress that the draftsman of this act, consciously or unconsciously, was affected a good deal by the language of the Pennsylvania statute. The Pennsylvania statute says "cruel and barbarous treatment on the part of the husband, such as to endanger the wife's life or health and render cohabitation unsafe." If the Congress puts "or"—and personally I do not strenuously object to it—it may introduce an additional cause. I think it is in the direction of making an additional cause. It is a very slight additional latitude; but, as our friend, the Vice-Chancellor, has so ably pointed out from time to time, in the long series of decisions, and there are so very many of them, interpreting every single word that is used in divorce statutes, there have been the finest distinctions. If the Congress deliberately varies from the text of an act that has been interpreted in this State, and, I assume, in other States, it may run into a danger that it does not really desire to incur. The proposed statute says "extreme cruelty;" the Pennsylvania act says "cruel and barbarous treatment on the part of the husband such as to endanger his wife's life or health, and render cohabitation unsafe." The proposed statute is "extreme cruelty on the part of either husband or wife such as to endanger the life or health of the other party, and render cohabitation unsafe."

The danger in putting in that "or" is, it is disjunctive; it is "extreme cruelty which renders cohabitation unsafe." Then it becomes a question of judgment on the part of the Master, if there should be a Master, or of a jury, if the case goes to a jury, whether such and such a state of facts amount to rendering cohabitation unsafe. Now, we know how fine distinctions have been made, always in the direction of greater and greater latitude, and it is with the desire in our minds of correcting those things, and writing the law plainly in the light of the decisions, that we members of the Bar, who have been clothed with the responsibility of drafting this act, have used the language employed.

F. H. BUSBEE, North Carolina: It seems to me the evils of divorce which we are here seeking to remedy apply almost all to

divorce *a vinculo;* but it would seem to me to be a hard message to send to the wives of this country that extreme cruelty such as to render cohabitation unsafe should not be a cause for separation from the husband; and that is what you are now about to say, namely, that extreme cruelty such as to render cohabitation unsafe should not be a sufficient ground for the wife to apply to the courts to be protected from the brutality of her husband. We have in effect said that there shall be no cause for a separation *a mensa;* no cause to protect the wife from the daily association and danger of a brutal husband, unless it shall be of sufficient gravity to give occasion for and justify a suit for separation from the bonds of matrimony. In most of the States, my own included, the causes which justify a divorce from bed and board are much less stringent than those which justify divorce from the bonds of matrimony. We are putting ourselves on record now as saying that these two actions for divorce shall stand exactly upon the same footing. I do not wish to endorse that, and I think that this is a very moderate request, that extreme cruelty, such as to render cohabitation unsafe should justify the wife in asking for a separation. As I take it, under this provision, the application will almost always be by the wife, not for the breaking of the bonds, but for protection from the savagery of the husband.

I hope the amendment will pass.

VICE-CHANCELLOR EMERY, New Jersey: As I understand it, the question is whether "and" should read "or?"

The PRESIDENT: The proposition is to substitute the word "or" for the word "and" before "render" in section d, on page 6.

VICE-CHANCELLOR EMERY, New Jersey: I so understood it in the course of debate. The question does not yet arise as to whether for divorce *a mensa* we shall have the last clause in the section, that is, the new paragraph "e" as suggested by the Committee. At present, that is entirely eliminated, and I will address myself to paragraph d as before the Congress.

Now, it is altogether a question of the construction of that statute in the terms in which it is written. The idea seems to be that, unless the word "or" is put there expressly, the language of that section is such that "and" is cumulative and means, in introducing the second branch of the subject, a different thing from what is referred to in the other. I think that is a wrong view of the statute, and that these two clauses which are connected by the conjunction "and" are merely descriptive of the extreme cruelty which justifies the act, and that they are both essentially the same description.

F. H. BUSBEE, North Carolina: Then there can be no objection to making it "or."

VICE-CHANCELLOR EMERY, New Jersey: "Extreme cruelty on the part of either husband or wife, such as to endanger the health or life of the other party"—that is the extent to which it must reach, "endanger the life or health"—"and render cohabitation unsafe." Unsafe to what? Life or health; that is what it means.

JOHN C. RICHBERG, Illinois: Then it does not mean the same thing.

VICE-CHANCELLOR EMERY, New Jersey: Yes, it is a further description, a cruelty such as to endanger life and health also renders it unsafe. There is no objection whatever—I only want to call attention to this, it is exactly the clause used in paragraph d of section 3.

F. H. BUSBEE, North Carolina: But we left it there.

VICE-CHANCELLOR EMERY, New Jersey: My impression would be, in construing that statute, that I would use the same standard as to both. In order to determine whether cohabitation was unsafe, you would have to inquire, Does it endanger life or health, not make life burdensome; it is a question of unsafe. Unsafe, in what point of view? Unsafe to life and health.

SENECA N. TAYLOR, Missouri: Then, there can be no objection to the change.

VICE-CHANCELLOR EMERY, New Jersey: I do not see any objection. My view is the description is the same, and that it would be so construed.

The question being upon the adoption of the amendment substituting the word "or" for the word "and" in paragraph d, it was agreed to.

The question being upon the adoption of paragraph d as amended, it was agreed to.

WALTER GEORGE SMITH, Pennsylvania: I now move the adoption of paragraph e, which I will read, as follows:

"Such indignities, threats or acts of abuse, as to render the condition of the other party intolerable and life burdensome, and to force such party to separate from the other and to live apart."

I merely remind the Congress of what I referred to yesterday, that is, this is an additional cause for divorce *a men a* which is not within the literal scope of the instructions of the Committee, but the Committee took it upon itself to add this.

REV. DR. HENRY COLLIN MINTON, New Jersey: I second the motion. I myself am sorry that the Committee felt called upon to

depart from the instructions of the Congress at Washington in this regard. I turn to the resolution on this subject passed at that meeting. It is as follows:

"4. An innocent and injured party, husband or wife, seeking a divorce, should not be compelled to ask for a dissolution of the bonds of matrimony, but should be allowed, at his or her option, at any time, to apply for a divorce from bed and board. Therefore, divorces *a mensa* should be retained where already existing, and provided for in states where no such rights exist."

I think those of us who were present at Washington will have a very distinct recollection that the vote of the Congress there was that divorce from bed and board should be substituted for absolute divorce contingent upon the choice of the person making the application, whereas now, in the report presented at this meeting an additional reason for divorce *a mensa* is provided. This, it seems to me, is a very serious departure from the thought in the mind of the Congress at Washington. The whole question of divorce *a mensa* is raised by this issue presented by the Committee; and it may be remembered by some that I took occasion to speak, to be sure from the theoretical or academic point of view, of some of the peculiarly abhorrent features of the divorce *a mensa*. Having exhausted my privilege to the floor by my preliminary address, I was not able to substantiate my views later. However, I think, from the standpoint of the law, as well as from the wider standpoint of society and sociological vision, there are peculiar embarrassments attaching themselves to the strained and anomalous status which is introduced by divorce *a mensa*. I am perfectly willing in my own mind to consent that divorce *a mensa* may well be provided for those who, for conscientious or religious reasons, cannot become a party to absolute divorce; but the question raised by this report is whether or not we are ready, as has been mentioned by the gentleman from North Carolina, to lower the bar and make divorce *a mensa* easier than divorce *a vinculo*. I insist that that was not in the mind of the Congress in Washington, and I very much question whether it would be wise for us to add that thing in approving the report now. Divorce *a mensa* is, strictly speaking from the theoretical point of view—those of us who are laymen cannot speak from any other—not the proper term to use; and I think it would have been a great gain in the whole movement that this Congress contemplates if we had introduced into the terminology of our work the term "judicial separation," which is more and more coming into vogue in Europe, as I understand, and they drop the word divorce altogether in the term divorce *a mensa;* for, judicial separation is what it is.

Now, I think we should leave it to the opinion of the court as to

whether the things enumerated in this proposed amendment are or are not extreme cruelty, and let the courts, under the provisions of the statute, decide. From the standpoint of the outsider and the layman, I believe that there are indirect reasons why it is gravely objectionable that we should make divorce *a mensa* easier than divorce *a vinculo*. There are other reasons in my mind which I do not care just now to present. I would like to hear from the gentleman of the Bar. Of course the Committee has removed every reason for criticising this extension by the new classification of the articles proposed, but my point now is that we are departing from the action and thought of the Congress at Washington, when this matter was thoroughly discussed, in a much larger attendance than we have here to-day. I think we ought to pause before we vote aye on this resolution.

PERCY WERNER, Missouri: I am opposed to this additional paragraph, reaching the same conclusion as the gentleman who has just taken his seat, and perhaps from directly opposite reasons. It is clear from the report of the Congress held in Washington that it intended that the causes for divorce *a vinculo* and *a mensa* should be the same; and it used the term "intolerable cruelty" to cover the sections which have now been divided into extreme cruelty and indignities. Therefore, this is a departure.

Now, the expression "intolerable cruelty" was used in the Congress at Washington with the full understanding that it included both physical cruelty and indignities. Yesterday I moved the retention of the word "indignities" for the very reason that I now move to strike it out, namely, because I desire that the expression "extreme cruelty" should include "indignities." It is well known to all lawyers that if we retain the expression "extreme cruelty" in the causes for divorce *a vinculo*, and in the causes for divorce *a mensa* add to the words "extreme cruelty" the words "indignities," we thereby differentiate between the two causes in such a way that the courts are precluded from giving a construction to the words "extreme cruelty" which will include "indignities." So far as I am concerned—I know not whether I oppose the current of thought of this Congress or not, and so far as I owe it to the State I represent—and to myself it would make no difference—I see no sanctity in marriage that should consent to its profanation; and I see no reason that allows a divorce for extreme cruelty which does not allow it for a refined cruelty more profane and more deadly than any physical cruelty which might be inflicted. It is therefore for the purpose of making these two sections harmonious, and since the word "indignities" has been stricken out of the causes *a vinculo* for the purpose of allowing the courts to give the words "extreme cruelty" that con-

struction which will admit of the inclusion of "indignities," even though now under the language adopted those indignities would have to be such as to endanger the life or health, that I shall vote for the non-retention of this paragraph in the causes for divorce *a mensa*.

WALTER GEORGE SMITH, Pennsylvania: I will ask unanimous consent to amend the section, in the interest of clearness, before the Congress votes on the amendment, so that it will read: "such indignities, threats or acts of abuse on the part of either husband or wife, as to render the condition of the other party," etc., so as to make it coincide with paragraph d.

The PRESIDENT: Is there any objection to the amendment which has been suggested by the Chairman of the Committee on Resolutions? I understand there is no objection; and the consent may be taken as granted.

WALTER GEORGE SMITH, Pennsylvania: I do not feel that any additional light is needed upon this subject of permitting divorce a *mensa* as well as divorce *a vinculo* although additional light could be thrown upon it. I recognize the force of the argument of our friend from New Jersey and our friend from Missouri, and I can see, I think, the consistency of the position assumed by our friend from New Jersey, for we do make more liberal causes, additional causes for divorce *a mensa* than for divorce *a vinculo*. It may be actually easier in that respect to obtain a divorce under certain conditions. We certainly deplore every increase in the increasing number of such divorces—that I recognize perfectly well, and the Committee recognizes it; therefore, I have nothing to say in opposition to the arguments of the gentlemen who have spoken, assuming the premises on which they base their arguments. The Committee, as we stated in our report, frankly admit that we exceeded our instructions;—it is not a question of admission, it is a matter of duty to call the attention of the Congress to the fact that this is an additional cause for divorce *a mensa*. If the Congress should be of opinion that a wise public policy requires that simply there shall be one category of causes for both kinds of divorce, and in favor of the conscience of those persons who are opposed to absolute divorce, a limited divorce, judicial separation, a divorce from bed and board—the terms are all synonomous—should be granted, then the arguments of our friends are perfectly consistent, and the Committee's report should not be accepted on this particular point.

I think I may say that the feeling of the Committee was—but I say this with great hesitation, and I am subject to correction by my colleagues if I am in error—the feeling of the Committee was that there was no public danger in including among the causes for judi-

cial separation a cause that would make it a matter of injustice, in the radical sense of the term, to compel two mismated persons to remain in the relation of husband and wife in all that that implies. But if the Congress feels that we should simply give the option, that there should be so many causes for separation either *vinculo* or *a mensa*, and give the innocent injured party the choice, then the argument of our friends is absolutely consistent, and this paragraph should be voted down.

SENECA N. TAYLOR, Missouri: I want to say one word as to the legal aspect of this case. Yesterday, under paragraph d, as applying to divorce *a vinculo* we struck out the part that is now embodied in this new paragraph. I think the argument of my colleague from Missouri on one phase of this case is absolutely unanswerable from a legal standpoint; that is to say if, for causes for divorce *a vinculo* we undertake to construe "extreme cruelty" as meaning that kind of refined cruelty of which he speaks, and then when we come to divorce *a mensa* put in this paragraph, every court construing the statute together would say that in the mind of the Legislature there was a clear-cut distinction, and a limitation put on the words "extreme cruelty" as a foundation for divorce *a vinculo*, and that it could not and did not include these indignities of which we speak. I think we all agreed yesterday that a proper interpretation of "extreme cruelty" as now used in divorce *a vinculo* did and would include indignities. But if we allow it here we take from that the force and cogency which it had. Further, we do depart in our utterance to-day from the Congress that met at Washington.

CHARLES F. LIBBY, Maine: As a member of the Committee, I was not present at the time Mr. Siddons appeared and persuaded us to make the change in the first draft of this bill. I have refrained from interfering with the report of the Committee, or failing to support it; but I see that there is a tendency to break away in this matter from the unanimity with which that report has been made, and I want to say this, in explaining how the matter stands in my mind. I think the Committee made a mistake with reference to these two paragraphs in undertaking to define intolerable cruelty. We have avoided definition in some other matters. You remember that as to insanity we have not undertaken to define what insanity is. In my own State we do not undertake by statute to define what extreme cruelty is. We simply state extreme cruelty is a ground for divorce. Now, I think our Committee made another mistake. They not only undertook to define what extreme cruelty is, but they undertook to say that intolerable cruelty is extreme cruelty. I think they should have left the words "intolerable cruelty," just as

the Congress adopted them last February in Washington; and I think if the Committee had done that, we should have had no discussion whatever with reference to these two sections. I understand Judge Taylor to support now a change in the report of the Committee based on the argument of his colleague. That breaks up somewhat the unanimity of opinion behind this report; and I simply want to state how the whole matter appears to me. I think it would have been wiser to have used the words "intolerable cruelty" as the words adopted by the Congress in their resolution, and not undertaken to define those words at all. The courts are competent to determine, under the facts of each case, what is intolerable cruelty; and I think we all recognize the fact that there may be a refinement of cruelty not accompanied by physical violence much worse to a sensitive person than any blows that can be inflicted.

The PRESIDENT: Does the gentleman think that this paragraph should be adopted or not?

CHARLES F. LIBBY, Maine: I should favor the motion of the gentleman from Missouri. I supposed it was apparent that that would be the result of my remarks.

PERCY WERNER, Missouri: I want to say that I am heartily in accord with the remarks last made. There is certainly nothing irrevocable in what has been done by the Committee on Resolutions, nor what has been done by the Congress so far. I feel it would be more satisfactory to every member of the Congress here if we were to say, "We will go back now to the action of the Congress as held in Washington, and leave the ground as a cause for divorce. *a vinculo* and *a mensa*, intolerable cruelty—the same in both of the articles—and leave the construction to the ability of the courts as at present, or as in the future they may be, constituted, and not attempt here, by definitions and limitations, to limit it."

TALCOTT H. RUSSELL, Connecticut: I want to say that I coincide fully with the remarks of the delegate from Maine on this subject. In Connecticut we have the simple phrase "intolerable cruelty," and we leave it to the courts to construe that language, and they construe it with some degree of latitude. They say it is possible under some circumstances that mere words and abuse not accompanied with physical violence may constitute intolerable cruelty; and I think that course is the wiser to take.

REV. A. J. D. HAUPT, Minnesota: What is the motion before the House?

The PRESIDENT: The motion is to adopt paragraph e, which is practically the latter half of paragraph d as reported by the Committee.

REV. A. J. D. HAUPT, Minnesota: I move you as a substitute motion that the paragraph as proposed be stricken out.

The PRESIDENT: That is substantially the question raised by the other motion. All the gentleman has to do to express that view is to vote against its adoption.

VICE-CHANCELLOR EMERY, New Jersey: This is a question that does not especially interest either the State which I represent or the men of the Eastern States—I mean this question of adding anything in the way of limitation. At the Congress there was a debate on the general causes for divorce which in this respect were agreed on, and the term used in regard to this cause was intolerable cruelty or extreme cruelty; it was called either. In most of the States which use the word at all, and use only a single adjective, extreme is the word. I think it is very doubtful whether there would be practically any difference in the construction, but I also think that it would be extremely improbable that any State which now uses the term "extreme cruelty" in the statute would change to the word "intolerable." I do not think, however, that the adoption in either form would make any substantial difference in reference to that cause. Now that was before the minds of the Congress in that full convention—the simple phrase "extreme cruelty,"—without attempting to go into any examination as to the way this had been specially defined in the different States. And in determining that decrees from bed and board should, at the option of the party, be given in all cases where there was a divorce *a vinculo*, the general question presented was this, as I recall it, whether there should not be some provision by which those persons who were conscientiously opposed to the procuring of a divorce from the bonds of matrimony, should still have some relief in a case where they were entitled to separation. Now, in all the States which have constitutions prescribing equal rights, it would be impossible to pass a statute giving the option to any citizen of a State by reason of his religious beliefs or convictions. Attention was then called to the fact that statutes, in those States which have passed statutes directing that, if a person had religious scruples against obtaining a divorce from the bonds of matrimony, he might obtain a divorce *a mensa et thoro*, have been held unconstitutional. You cannot make the application of a law depend on the religious belief of a citizen, and therefore it was put in this form,—the option must be general. That was the general object that the Convention wanted to secure. Therefore, the reso-

lution was passed in that way that, where those causes are sufficient to dissolve the bonds of matrimony, they will let the injured party have the option to apply for a judicial separation. That was the general declaration we wanted to reach. When we came, however, to draft a statute, we found throughout the west and in one or two States of the east, when they came to describe in their statutes the cause of cruelty, they added other words, showing that they might in those States construe the words differently from what they did in the east. For instance: I take the State of Missouri. They have, as in New Jersey, just a single word "extreme cruelty." The courts have made a judicial construction of those words. We know exactly what the phrase means. In Connecticut we have the words "intolerable cruelty," nothing else. Now, let us turn to Missouri and see what that State gives as the causes for divorce. "Seventh. Has been guilty of such cruel and barbarous treatment as to endanger the life of the other." The first cause is not even hinted at. The eighth clause is "has offered such indignities to the other as to render his or her condition intolerable." Still, now, so far as the bulk of the States are concerned, the adoption in that form would not affect them at all. The question is, could that be adopted in Missouri? Would you not in Missouri add the clause you have now? Take the State of Pennsylvania; there that is also enumerated as an additional cause. When the matter was called to the attention of the Committee that this was an extension of the causes declared by the Congress, the Committee said they were willing to submit to the Congress the question as to whether, in judicial separation, or divorce *a mensa*, that should not apply. Now, there is this great difference between the effect of a divorce from the bond of matrimony and a divorce *a mensa*—divorces *a mensa* are in the list of all the statutes, I believe, either absolute, that is to say, perpetual, or for a limited time. In many of the statutes is this further clause, "or such other limited time as may seem just and reasonable;" and the statute of Pennsylvania has a most excellent provision as to judicial separation, which is this: In case of a reconciliation at any time thereafter, the parties may apply for a revocation or suspension of the decree. Now, that is the great practical difference between divorce from the bond of matrimony and divorce *a mensa*. In all cases a divorce from the bond of matrimony terminates the obligation forever from the time of entering the decree or judgment; in a divorce *a mensa*, the circumstances being considered, the court will, in the first instance, say: "This is so hopeless a case, and it is so necessary for the safety and protection of the parties that it terminate forever, and we will now do it," or they may say this, "We will decree the separation, with a provision that both parties may apply hereafter, on a reconciliation, or on a reformation of the

guilty party, for a revocation or suspension of the decree." That is a practical reason in the administration of justice why there should in some cases be a difference between dissolution of the bonds of matrimony and a judicial separation; and I think that matter was not so far gone into at the general Congress at Washington, which disposed of principles, that the Congress should fairly be taken as finally deciding that, notwithstanding that difference, we will say, and bind all our future meetings to say, there shall be no distinction. Now, as far as I understand, that is the position of the Committee.

The PRESIDENT: I should like to know the thought of the gentleman from New Jersey concerning the suggestion made by the gentleman from Missouri that the adoption of this paragraph would affect the interpretation by the courts of "extreme cruelty" in the other section, because having inserted it in one place and omitted it in the other, it apparently would look as though the statute intended that different thoughts should be expressed in the one case from that expressed in the other. What is the Vice-Chancellor's view of that?

VICE-CHANCELLOR EMERY, New Jersey: Well, I think that in undoubtedly so. I will tell you why. This first standard of extreme cruelty was expressly made that which affected the life and health, making life and health unsafe; that is expressly stated.

The PRESIDENT: But would a court be likely to say that indignities to the person which amount to cruelty could not be held to be extreme cruelty under the preceding section, because in this place we have used it in connection with divorce *a mensa et thoro?*

VICE-CHANCELLOR EMERY, New Jersey: Not if it affected life and health. That is the point. If it affects the life and health; it is extreme cruelty, if you touch life and health. I was going to say this, in those States, Pennsylvania especially, where they have added it as a special clause, they have in their decisions said that there is a distinction between endangering health and making the condition intolerable or burdensome. They have said there is. If any kind of conduct, physical, mental, or other kind, affect the life or health, it would come under the first clause. The only reason for holding that it did not come under the first clause would be that it did not reach in its effect to the life or health of the party so as to make it unsafe.

SENECA N. TAYLOR, Missouri: May I ask the Vice-Chancellor one or two questions; if we let paragraph d in divorce *a vinculo* stand as it now is, and if we adopt the paragraph now before the

House, will the delegate from New Jersey, as a lawyer or chancellor, say that adopting this last would not take considerable from the force and effect of paragraph d on page 4? Would not any court, in construing it, say the Legislature clearly had before their minds in the one case extreme cruelty only which does not include indignities, because in the paragraph before the House they have used it, and therefore they must have meant something else?

VICE-CHANCELLOR EMERY, New Jersey: To answer that question squarely, I would say yes. My test under the first section of extreme cruelty would be its ultimate effect on life or health. Indignities as to one person might cause that effect on the life and health which in another and robuster person would not. So that it is a question always as to whether indignities affect life and health under the first section, but the other section extends the case to where the indignities render life burdensome, but does not affect the life and health.

SENECA N. TAYLOR, Missouri: I want to say one word. The Vice-Chancellor has quite correctly quoted the statute of Missouri in the seventh and eighth clauses. The seventh clause says "such cruel and barbarous treatment as to endanger the life and health." Well, now, this paragraph d that we adopted yesterday is couched in different language. Then comes section 8, which says, "inflict such indignities as to render life intolerable." Our courts say they were separate and distinct things in the mind of the Legislature. Now, I wish to say here that under the Missouri decisions, in reference to this paragraph d, in my judgment the courts would unhesitatingly say that indignities such as to render the condition intolerable comes within the category of causes for divorce *a vinculo*. I go further and say that if we adopt the paragraph now before the House, any clear-minded judge would say, "Then it was not intended that these indignities such as are spoken of in divorce from bed and board would be ground for divorce *a vinculo*."

The PRESIDENT: Would they say that, if they endangered life and health?

SENECA N. TAYLOR, Missouri: Oh. well, if it endangered life or health; but it detracts from the first in the mind of every lawyer here, and I do not see it adds very much to the other. I was with the Committee on Resolutions, and will stand by the resolutions as a whole. But I am not hide bound. If anything is pointed out which the Committee has done that ought to be undone, I am not with them.

C. LA RUE MUNSON, Pennsylvania: It seems to me in this argument we are losing sight of the real reason which brought together

this Congress. It was not that there was an evil prevalent in divorces *a mensa*. It was because the avenues for divorce *a vinculo* were too broad and too easy of access. It was because the courts of some States, and in fact of too many of the States, had so construed certain sections of their statutes that it became possible in some places for a man and woman to be separated forever from the bonds of matrimony by the mere opinion of the court itself that they should not live together. Now the line of reasoning which brought this Congress together, which gave you, Mr. Chairman, the thought to call together through the Governors of the States these delegates, was to make divorce *a vinculo* difficult, but not to render difficult a separation by the act of the law. In short, I stand for divorce *a vinculo* personally for only one ground; as a delegate, I stand for it only when there have been such acts on the part of the husband or wife as would morally justify a divorce, if that word can be used. But, for separation by law, by which wife or husband —usually of course the wife—may be separated from a spouse who has been to her a demon either in word or act, for those causes I believe in a construction that is liberal. The effect of the argument that has been made, if it were carried out into our act, would be, by using the word only "intolerable" or "extreme cruelty" in divorce *a vinculo* after all to go back virtually to the evil from which we are trying to escape; so that some courts might construe certain acts as extreme cruelty which ought not to be so construed; and therefore the limitation upon the words "extreme cruelty" in divorce *a vinculo*, by confining it to those acts which do render life and health unsafe. Whereas, in this clause, the divorce *a mensa* there were added to it the additional ground of personal indignities, which are not acts of extreme cruelty, and yet are sufficient, and should be sufficient in law as well as in morals, to award a divorce *a mensa* So it seems to me that we ought not to go back and widen the doors for divorce *a vinculo* while we are justified in the inclusion of this section by making the door still wider, at least not any closer than at present, for the separation by law, which is not a divorce either in law or in church.

ADOLPH SLOMAN, Michigan: It is my understanding that this Congress has met for the purpose of improving the divorce laws existing, and to make them uniform throughout the States. We have left the question of extreme cruelty in divorce *a vinculo* to be determined by the court. We have put a different construction upon divorce *a mensa*, which has raised the question as to how far the court would be concluded in determining what is extreme cruelty *a vinculo* in view of the limitations placed *a men* Now, it strikes me that the divorce *a mensa* brings forward dangers that are not

likely to exist as strongly in the case *a vinculo* because parties remain married, or at least they remain husband and wife in certain circumstances, and not in others. In other words, the divorce from bed and board places each in a position where privileges that are denied them of cohabitation are sought elsewhere, and under different circumstances rendering conditions even more dangerous than under the other form of divorce. I should oppose the adoption of paragraph e if I believed that paragraph d might have a word or two added to it that would cover the entire field; and in that connection it is my intention to ask for a re-consideration, so as to add the same words to that section in *a vinculo* and the words are these; so as to make paragraph d read "extreme cruelty on the part of either husband or wife, such as to endanger the life or health of the other party, or render cohabitation unsafe, or life intolerable." Now you use the term "and life burdensome." I propose to use the words "life intolerable" in both sections.

The PRESIDENT: I call attention to the fact that this is impertinent to the present inquiry. The question before the Congress is the adoption of paragraph e.

ADOLPH SLOMAN, Michigan: Well, it is in view of these circumstances that I shall vote against the adoption of paragraph e.

PRESIDENT WARREN, South Dakota: I am heartily in accord with the position of the gentleman from Missouri. I am opposed to the adoption of this paragraph, because, as I said yesterday, under cover of some of these phrases, "threats," "life burdensome," in the actual practice of some western States, divorces are allowed that ought not to be allowed at all, and are only a fraud on the public.

The question being upon the adoption of paragraph e, a division was called for, and 8 delegates voted aye and 15 no; whereupon the Chair declared the paragraph not agreed to.

PERCY WERNER, Missouri: Before proceeding further, having voted in favor of the adoption of paragraph d, I now move a re-consideration of that vote, and move the addition of the words suggested by the gentleman from Michigan.

The PRESIDENT: The gentleman from Missouri is going ahead too rapidly. He moves a re-consideration, and also an amendment, before the Congress has had time to express its views on the question of re-consideration.

PERCY WERNER, Missouri: I said that I moved a re-consideration for the purpose of moving the addition of the words "or life intolerable," as suggested by the gentleman from Michigan. I first move a re-consideration of the vote on the adoption of paragraph d.

ADOLPH SLOMAN, Michigan: Under the ruling of the Congress, when you come to adopt the entire article, and members of the Congress are privileged to suggest amendments to particular sections, I intend to wait until the other paragraphs e, f and g are adopted, and then move the amendment suggested.

The PRESIDENT: It is very interesting to know the intention of the gentleman from Michigan, but a motion to reconsider has been made. Is it seconded?

PERCY WERNER, Missouri: I withdraw the motion to reconsider upon the understanding that the suggestion may be made when the matter comes up on the adoption of the section as a whole.

WALTER GEORGE SMITH, Pennsylvania: The rejection of the last paragraph which had been marked e, makes it necessary to resume the original lettering of the paragraphs as already printed. The next paragraph, therefore, is the original paragraph e, and I move its adoption.

The paragraph was then read by the Secretary, as follows:

e. Wilful desertion for two years.

The question being upon the adoption of paragraph e, it was carried.

WALTER GEORGE SMITH, Pennsylvania: I now move the adoption of paragraph f, as follows:

f. Habitual drunkenness for two years.

Duly seconded and adopted.

WALTER GEORGE SMITH, Pennsylvania: I now move the adoption of paragraph g.

g. Hopeless insanity of the husband.

Duly seconded.

ERNEST MERTON, Wisconsin: I would like to inquire from the Chairman why hopeless insanity shall apply to the husband and not to the wife? Why are they not placed equal before the law?

WALTER GEORGE SMITH, Pennsylvania: The answer is that the endeavor has been to make them as far equal before the law as possible under the limitations of nature; but they cannot be made equal upon this ground. We say that a wife shall not be tied to an insane husband in all of the relations of matrimony; but we also say, and say it with emphasis, that the duty of the husband is to maintain and support the insane wife, more particularly by reason of the fact that her insanity may be brought about by the matrimonial relation.

The question being upon the motion to adopt paragraph g, it was carried.

WALTER GEORGE SMITH, Pennsylvania: I now move you the adoption of section 4 as the paragraphs thereof have been approved.

ADOLPH SLOMAN, Michigan: I now move you to amend paragraph d by adding the words "or life intolerable."

Duly seconded.

AMASA M. EATON, Rhode Island: I rise to a question of order whether it is not proper to reconsider before moving an amendment.

The PRESIDENT: The Congress has just disposed of that question by the adoption of paragraph d in the shape in which it is now adopted. If the gentleman wishes to move to reconsider, and voted in favor of its adoption, he may do so.

ADOLPH SLOMAN, Michigan: I made my motion simply because yesterday when we adopted Article I, we were allowed to amend certain sections of that article. But I withdraw my motion, and now move you, in order to have no question on the subject, to reconsider the vote by which paragraph d was adopted.

Duly seconded by Mr. Werner, of Missouri.

The PRESIDENT: Both of the gentlemen having voted in the affirmative, a motion to reconsider has been made; are you ready for the question?

The question being upon the motion to re-consider, it was lost.

PERCY WERNER, Missouri: I rise to make a slight suggestion, and that is that the title, which I assume is a part of this article divorce *a mensa*, be changed to "Judicial Separation."

WALTER GEORGE SMITH, Pennsylvania: I would say, if the gentleman will allow me to state, that the Congress adopted, as against a motion made by the delegate from New Jersey, Rev. Dr. Minton, the nomenclature that we have. The Congress, through its Chairman, asked yesterday for leave to have this statute arranged in sections, irrespective of titles; that is to say, the members of Congress will observe it is numbered consecutively in our sections, but it is broken up into chapters and titles.

ADOLPH SLOMAN, Michigan: To bring this matter before the meeting, I second the motion of the gentleman from Missouri.

The PRESIDENT: It has been moved and seconded that the title of this section be changed from "Divorce *a mensa*" to "Judicial Separation." Are you ready for the question?

AMASA M. EATON, Rhode Island: That is one of those points, I presume, where there will be no objection in future in having the Legislature of each State adopt its own formula. Therefore, it seems to me, unnecessary to vote on it at the present time. Those States that favor the words "judicial separation" can use it; it is a mere matter of form; it does not affect the substance of the act. I presume the Chairman of the Committee on Resolutions will agree with me. Therefore, it is not necessary to make the change now.

The PRESIDENT: I should like to know whether it would not be better to add the words "*et thoro.*"

WALTER GEORGE SMITH, Pennsylvania: We have not added to "*a vinculo.*" Every lawyer, it is needless to say, knows what "*a vinculo*" means.

VICE-CHANCELLOR EMERY, New Jersey: The words are there, "bed and board."

The PRESIDENT: The question before the House is the change of the title "Divorce *a mensa*" to "Judicial Separation;" are you ready for the question?

The question being upon the motion as stated by the Chair, it was lost.

Having called the roll of the States, the Secretary announced 19 States voting aye, and no State no; whereupon the Chair declared section 4 adopted.

WALTER GEORGE SMITH, Pennsylvania: I now move the adoption of section 5.

Duly seconded.

The Secretary then read the section, as follows:

Article V.—Bars to Relief.

Section 5. When Decree Shall be Denied.

No decree for divorce shall be granted if it appears to the satisfaction of the court that the suit has been brought by collusion, or that the plaintiff has procured or connived at the offense charged, or has condoned it, or has been guilty of adultery not condoned.

The Secretary proceeded to call the roll of the States, and announced that 19 States voted aye, and no State no;whereupon the Chair declared section 5 adopted.

WALTER GEORGE SMITH, Pennsylvania: I now move the adoption of section 6, in which necessarily there is a blank left which

must be filled up by the different Legislatures, owing to the different names of the courts which will take jurisdiction of divorce.

Duly seconded.

The Secretary then read section 6, as follows:

Article VI.—Jurisdiction.

Section 6. In What Courts.

The ..... court of this State shall have and entertain jurisdiction of all actions for annulment of marriage, or for divorce.

The question being upon the adoption of section 6, it was unanimously agreed to.

WALTER GEORGE SMITH, Pennsylvania: I move the adoption of section 7.

Duly agreed to.

The Secretary then read section 7, as follows:

Section 7. By Personal Service in Actions for Annulment.

For purposes of annulment of marriage, jurisdiction may be acquired by personal service upon the defendant within this State when either party is a bona fide resident of this State at the time of the commencement of the action.

The question being upon the adoption of section 7, it was unanimously agreed to.

WALTER GEORGE SMITH, Pennsylvania: I will read section 8, and move that it be afterwards taken up paragraph by paragraph.

Duly seconded, and agreed to.

The section was then read, as follows:

Section 8. By Personal Service in Actions for Divorce.

For purposes of divorce, either absolute or from bed and board, jurisdiction may be acquired by personal service upon the defendant within this State, under the following conditions:

a. When, at the time the cause of action arose, either party was a bona fide resident of this State, and has continued so to be down to the time of the commencement of the action; except that no action for absolute divorce shall be commenced for any cause other than adultery or bigamy, unless one of the parties has been for the two years next preceding the commencement of the action a bona fide resident of this State.

b. When, since the cause of action arose, either party has become, and for at least two years next preceding the commencement of the action has continued to be, a bona fide resident of this State: Provided, The cause of action alleged was recognized in the jurisdiction

in which such party resided at the time the cause of action arose, as a ground for the same relief asked for in the action in this State.

WALTER GEORGE SMITH, Pennsylvania: I move the adoption of paragraph a.

Duly seconded, and agreed to.

WALTER GEORGE SMITH, Pennsylvania: I move the adoption of paragraph b.

Duly seconded.

REV. CAROLINE BARTLETT CRANE, Michigan: This paragraph is one concerning which there was a good deal of debate in the meeting at Washington. I recognize, as almost all of the delegates have, that the clause is a very important one to the end of discouraging migratory divorces. I believe that the clause should be passed, with one exception, which I most earnestly entreat this Convention to consider, and to adopt in the form of an amendment. What is the object of this Congress? It is to permit improvement and uniformity in the divorce laws of the several States of the country. But are we working in the interests of uniformity when we have certain States, as, for example, New York and South Carolina and the District of Columbia, which are entirely out of comity with the other States? We talk of comity between States. I care for comity between human beings and comity in the interests of wronged and injured husbands and wives, especially wives, for reasons which I will give hereafter. We have the great State of New York which grants divorce upon only one ground. We have the State of South Carolina, which grants divorce upon no ground at all. We have the District of Columbia, which grants divorce for one cause only. The exception for which I would plead is the exception in favor of an injured wife returning to the home of her father. Now, that does not open the door to migratory divorce. But, for example, a woman marries in the State of Michigan, her husband determines what shall be the place of her residence. Should she decline to go with her husband to the State of New York, or the State of South Carolina, it would be construed as a desertion. She is obliged to reside where her husband determines she shall reside. Suppose there arises a cause for divorce which cannot be obtained in the State, for instance, we will say, of South Carolina. A divorce on any ground whatever she cannot obtain in that State. Suppose her husband has committed a crime which will send him to the penitentiary for life. She returns a broken-hearted woman to her father's home. Now, I say that if those States are so out of comity with other States, if they are so far in aberration from the grounds of divorce which we recognize as rightful grounds, moral grounds,

then we should recognize the right of this woman returning to her father's home or her ante-nuptial domicile to sue for divorce upon grounds which are there legal.

Now, if we fail to do this, I am sure we are going to do a great wrong in a great many cases. Most of the States have substantial uniformity, in that case it will make no difference; but in the cases which are far outside of this general rule there is certainly a great disadvantage for the wife. For the wife is only there because the husband determines the place of residence. Therefore, the wife should have this privilege. For example, as head of the charity organization work in our town, I have come across a case recently of this nature, where the greatest injustice has been done to a woman now living in our State, having returned to her home. She cannot obtain a divorce, which everybody knows she ought to have, for the most atrocious reasons, because the offense was committed in a State where divorce is not granted for that reason.

I did not know this matter was coming up this morning, and therefore I am not prepared to speak upon it, as I hoped to be; but this Congress does set out causes for divorce; and if the causes for divorce which are recognized as moral causes hold in the State of an injured wife's former residence—I do not mean that a wife can go to any other State but only the one in which she was married—it certainly seems to me it should be granted there. We may discourage migratory divorce, but we discourage it with a vengeance when we leave an abused, wronged and helpless woman without remedy, because she was obliged to change her domicile and take that of her husband. I ask that this exception be made. I move an amendment which shall read as follows—not being a lawyer, I may not have put this in very good legal form, and I would be very grateful if any one suggests a better word for it—my amendment is to add at the end of the clause:

"And provided further, That an injured wife, having returned to her ante-nuptial domicile, and having there resided continuously for two years, may be granted relief according to the laws of such domicile."

PERCY WERNER, Missouri: I second the motion.

F. H. BUSBEE, North Carolina: Let me suggest to the lady from Michigan this slight change of verbiage, by putting just after the words "the cause of action arose" the words, "or in this State," so that the proviso shall read: "Provided the cause of action alleged was recognized in the jurisdiction in which such party resided at the time the cause of action arose, or in this State, as a ground for the same relief asked for in the action in this State."

VICE-CHANCELLOR EMERY, New Jersey: If the cause of action was recognized in this State, then there is no reason for the amendment.

REV. CAROLINE BARTLETT CRANE, Michigan: I do not think I shall accept that amendment.

The PRESIDENT: The amendment is not accepted, the argument therefore is upon the amendment offered by the delegate from Michigan.

VICE-CHANCELLOR EMERY, New Jersey: This question was raised once or twice before, and discussed pretty fully before the Congress. The suggestion of Dr. Crane was taken from the Pennsylvania resolutions, and I was looking for the list.

The member from Michigan wishes to re-open that question, and I was going to say that the amendment might be put in proper legal form so as to have the question brought before the House.

The PRESIDENT: I understand the delegate from Michigan to have asked for such suggestion; she has rejected one made by the gentleman from North Carolina.

REV. CAROLINE BARTLETT CRANE, Michigan: May I say I objected because there seemed to be a difference among lawyers on the subject?

The PRESIDENT: You need not give any reasons.

VICE-CHANCELLOR EMERY, New Jersey: This is the section: "If the plaintiff shall not have continuously resided in this State two years next before the reason complained of, the libel shall be dismissed * * * * or unless the defendant shall have resided continuously in this State three years next before the date of the complaint, actual service being made, or unless the cause is habitual intemperance or intolerable cruelty, or the plaintiff so domiciled in this State at the time of the marriage, and before bringing the complaint has returned to this State with intention of permanently remaining." That was the provision in the statute referred to—unless the plaintiff was domiciled in this State at the time of the marriage, and before bringing the complaint returned to this State with the intention of permanently remaining.

The PRESIDENT: Will the Secretary kindly read the amendment?

The Secretary read the amendment, as follows:

And provided further, That an injured wife having returned to her ante-nuptial domicile, and having there resided continuously for

two years, may be granted relief according to the laws of such domicile.

VICE-CHANCELLOR EMERY, New Jersey: Only a suggestion as to the form. Section b commences with this statement as to residence: "When, since the cause of action arose, either party has become, and for at least two years next preceding the commencement of the action has continued to be a bona fide resident of this State." That allows the wife to return, then the suggested proviso would be, "Provided, That an injured wife having returned to her ante-nuptial domicile, and having there resided continuously for two years," which may or may not be before the bringing of the action. That clause, I think, should come out, because the former clause that she should live there two years covers that. I suggest, therefore, that the clause, "and having there resided for two years" should be stricken out, it being covered by the previous part of the section.

REV. CAROLINE BARTLETT CRANE, Michigan: With the consent of my second, I will agree to the striking out of those words.

Agreed to also by the seconder.

The SECRETARY: Then the amendment will read:

And provided further, That an injured wife, having returned to her ante-nuptial domicile, may be granted relief according to the laws of such domicile.

REV. CAROLINE BARTLETT CRANE, Michigan: If I may add one word, which I forgot. Much emphasis has been placed upon the action of the previous Congress. I wish to say that, after the debate lasted several hours upon this subject, I discovered accidentally that a clause not in wording but substantially the same had been originally incorporated in the suggestions which were made to this Congress by the Committee, but which had been stricken out after it was printed, in the preliminary meeting at Washington.

WALTER GEORGE SMITH, Pennsylvania: When the delegate says the Committee, she should say the Pennsylvania delegation; it was not a suggestion by the Committee on Resolutions.

REV. CAROLINE BARTLETT CRANE, Michigan: I stand corrected; but the Pennsylvania delegation gave to us a number of suggestions, and it seems this very matter was amongst those recommendations which they made, but later, at a meeting of the Committee on Resolutions, it was stricken out. I wish to say also that, after a debate of several hours, the motion failed to carry by but one vote in the previous Convention; so that if there is anybody hypno-

tized by the idea of what happened in Washington, I wish to have it understood that this amendment came very near carrying. It would cause me great happiness to see it carried now.

PERCY WERNER, Missouri: I want to say, having seconded this amendment, that if I thought it opened the door in the least to migratory divorce, I would very heartily oppose it; but I see it does not, and it is in the interest of humanity.

AMASA M. EATON, Rhode Island: I call upon the Chairman of the Committee on Resolutions to ask whether it would be satisfactory to his Committee?

WALTER GEORGE SMITH, Pennsylvania: It would surely not be satisfactory to my Committee. The Pennsylvania delegation, as the delegate from Michigan has stated, when they prepared, in pursuance of what they deemed to be their duty, a series of propositions for the consideration of this Congress, and which were printed and submitted, stated:

"1. Each State should adopt legislation restricting the remedies afforded by its statutes of divorce to its own citizens, just provision being made, however, that when the status of a wife is restored as a citizen of her original State by her returning to that State after an injury sufficient to warrant a divorce therein, she should be entitled to sue in that State, provided she was a resident thereof at the time of her marriage. This privilege should be guarded by requiring a reasonably long period of residence in her original State after such return.

Note.—It will be observed that this resolution covers three points: (a) That the legislation of a state should afford protection only to its own citizens; (b) That a wife should not lose her citizenship by reason of her marriage, so far as the protection of the divorce statutes is concerned; (c) That her right to such protection should be restricted by requiring a given period of residence in her original domicile before bringing suit for divorce.

a. It is obvious that a very large proportion of the evils under existing legislation of the different states arises from the fact that the general proposition that the laws of divorce are properly made only for the protection of those persons whose domicile is in the state where relief is sought at the time cause of the divorce arose has been overlooked; and if each state would deny its courts jurisdiction in divorce to any applicant excepting one who was a citizen at such time, the anomalies now existing would be removed. Since the matrimonial relation is considered as being properly a matter of the highest moment to the state, and the preliminary contract must be executed in accordance with the laws of each state in order to be legal, it is obvious that any proceedings for dissolution of the status of marriage must find their sanction in the legislation of that state. And it has been settled by a long line of decisions that any attempt of one state to extend its jurisdiction over the status of marriage between citizens of another state is void, beyond the confines of the state in which proceedings are taken. All of the evils arising from migratory divorces will be met and removed by a strict adherence to this rule; and the extraordinary anomaly and injustice so often presented of persons who have been freed from the bonds of matrimony in one state being still held as married in other states will no longer exist.

(b) As is well known, the citizenship of a wife, depending upon her domicile, follows that of her husband. But when an injury has been done her sufficient to warrant a divorce, it has been long recognized that she might acquire a separate domicile, including of course a domicile in the state in which she had

her residence at the time of her marriage. By the adoption of legislation such as is recommended in this resolution, the wife will acquire such separate domicile as she may determine, either in the state where she is living with her husband, or by returning to the state in which she resided at the time of her marriage. It is intended to restrict this separate domicile, however, either to a different domicile in the state in which she has lived with her husband, or in the state in which she had her home at the time of her marriage. There should be no right for the wife to acquire a domicile other than that of her husband in any other state, excepting that of which she was a citizen at the time of her marriage. The reason for this is that either the courts of the domicile of both husband and wife should have jurisdiction, because the injury arose while they had a common domicile in that state, or the jurisdiction should be given in favor of an injured wife in the state of her original domicile, because in that state she would, in most cases, find her only relations and natural protectors when the ill treatment of her husband compelled her to withdraw herself from his home. There can be no reason why the courts of a state which, at the time of the marriage, and during the continuance of the marriage, and at the time the injury complained of arose, were foreign both to husband and wife, should acquire jurisdiction by the will of either of the parties."

Now, that was brought before the Committee on Resolutions at its first meeting at Washington, and the Committee decided, after full debate, that that provision should not be retained. Then on page 85 of the debates, to which the delegate from Michigan referred, will be found the further debate in the Congress; and the vote upon the subject will be found on page 94. The delegate now proposes to re-open that question. Surely, it would be unbecoming in me, if I had the power, and I surely have not the desire, to hold this Congress to any technical rules excepting the ordinary rules covering debate, certainly not in a matter of substance. It has been found, and it may well be found, that the proceedings in Washington require revision; that the Congress has committed itself to something that, after further consideration, it would desire to reconsider. I do not think it would be the desire of any one here, open minded as I trust we all are, to preclude further discussion on the subject. Therefore, I beg those who favor the position of the delegate from Michigan, not to attribute to the Committee a desire of that sort. But unless a new argument can be advanced that was not before the Committee, and not before the Congress, then I submit it would be injudicious for us to introduce this new principle.

The great desire of those who consider themselves as the special advocates of what are known as the rights of women are continually striving to put them upon a plane of individuality entirely and exactly equivalent to men, and also are endeavoring to retain for them certain exclusive privileges that they have by reason of their sex. Now, here is one of those cases where they should be put upon the same plane as man. For purposes of divorce a woman can acquire a separate domicile. That is what is known as the American doctrine on the subject. It is only necessary, therefore, for her to observe the same rule that is laid down for a man, and all her rights will be preserved. The special case that was in the minds of the delegation from Pennsylvania was the hardship that has appealed, no doubt, to the sympathies of the delegate from Michigan, of a

young woman taken from her father's home into a strange State and there maltreated, given just cause for divorce in accordance with these six categories we have enumerated, and it is proposed that, being in a strange place, she should be given the right to go back to her home and obtain a divorce, without observing the rules that are required of men. That is the evil, I assume, that is sought to be abated by this proviso. Personally, I do not object to it; but in view of the full consideration that has been given to the subject, and in view of the fact that this is introducing an exception that will lead perhaps to other exceptions, I think it will be difficult to carry it throughout the States when it is introduced; and I do not see that the evil is of sufficient importance to warrant us in adopting this proviso. The woman can choose her domicile, either the domicile that she had of her husband, and bring her suit there where the courts are open, or she can go and choose another and separate domicile in a bona fide manner, and avail herself of the laws there, if the law of the State she goes to recognizes the law of the State in which the injury has been done her.

Now, it is at the very root of this matter to secure uniformity and avoid migratory divorces, which are not the greatest evil, we all know that from the statistics, but which are one of the evils we wish to correct. If we introduce this proviso, it seems to me it would be dangerous. We should not vary from the instructions given us by the Congress at Washington.

PRESIDENT WARREN, South Dakota: I just wish to remind the gentleman that he has argued for an exception between the sexes in case of the hopeless insanity of the husband.

WALTER GEORGE SMITH, Pennsylvania: I have; we cannot change the laws of nature. In certain respects, of course, there must be inequality under certain conditions; but this does not appeal to me as being a case of that kind. However inconsistent the Chairman's position may be, or the Chairman may be, I appeal—and I think I may do so, and it is with a great deal of hesitation, in view of certain matters that happened in the past—however, I think I may appeal to the fact that the Committee has had this before it, and the Congress has had it before it.

C. LA RUE MUNSON, Pennsylvania: I am going to say that the question here, it seems to me, is whether we will or will not reverse the action at Washington. On behalf of the delegation from Pennsylvania, as Chairman, I submitted these resolutions to which the Chairman of the Committee on Resolutions called our attention; and we believed it was a proper inclusion in the law, and so it appears by our suggested resolution on page 19 of the printed proceedings at Washington. However, the Committee on Resolutions

disagreed with us, and reported adversely at least by omitting so much of our suggested resolutions. It came before the House then on a motion by Mr. Hart, of Louisiana, and subsequently I see he accepted an amendment that I suggested to him; and the matter was discussed at great length for two hours of our second morning, I think. The discussion is very vivid in my own recollection by reason of the decided views of the delegate of one of the Pacific States. However, when we came to a vote, the amendment of Mr. Hart, of Louisiana, was lost, as the delegate from Michigan properly says, by a vote of from 15 to 16. 31 States at that time voted, and, in point of fact, I think the roll call showed more than 40 States present. Now, I doubt very much the wisdom of this adjourned meeting of the Congress reversing that action. Personally, and I think I voice the sentiment of my colleagues, personally I believe in that inclusion; we from Pennsylvania thought so, and think so yet; but we bowed to the wisdom of the Congress, and I think by that action we should stand. If we open the door, perhaps it will be still further opened to changes.

AMASA M. EATON, Rhode Island: The Chairman of the Committee has stated his fear that a change of this kind may lead to further changes, and that the further change suggested may interfere with the adoption of our act by the different legislatures. Now, I have a little personal experience to state on that subject. Some five years ago the Commissioners on Uniform Laws recommended a law for passage on this subject, which included this very section, "Provided the cause of action alleged was recognized in the jurisdiction in which such party resided at the time the cause of action arose." In pursuance of the vote of the Conference, it became my duty to urge the adoption of that law on the Legislature of Rhode Island. I was there met, and they succeeded in preventing the passage of the law, by this very state of facts; that is, some of the gentlemen suggested "Supposing that a wife is treated in this way, there is no exception, there is no clause provided by which she can obtain a divorce." That was the potent reason that led the Legislature of Rhode Island not to adopt the law. If this clause had been in, I think—and there was good reason for thinking—that at that time the Legislature of Rhode Island would have adopted the proposed law. It seems to me, therefore, that the amendment now proposed meets a real want; and that in many of the States we should be more likely to secure adoption of our statute with this proviso in than without it. And inasmuch as the vote taken in Washington was so close, and the motion there to exclude prevailed only by one majority, I do not think that the Cogress is precluded at this meeting from taking this matter up, and passing it again.

The SECRETARY: But the final vote on the resolution was a vote of 26 States to 4.

AMASA M. EATON, Rhode Island: But the action on this motion prevailed by but one majority. I think, therefore, that with this clause in we should be more apt to secure favorable action by the different States. I favor the amendment, and I hope it will be adopted by a substantial majority.

JOHN C. RICHBERG, Illinois: As a member of the Committee on Resolutions, I listened with a good deal of interest to what my colleagues had to say upon this very section now under discussion, and, personally, if this were not subject to abuses, I would favor the amendment, but I am afraid that it will be subject to a great many abuses. Another reason is, that I was very much impressed by the remarks of the gentleman from New Jersey (Dr. Minton) and the gentleman from Missouri (Mr. Werner) when the other question was up. I refer to striking out an amendment to section d, where the Committee thought they were justified in making a departure from the action of the Congress. I was so much impressed with that that I refrained from voting in favor of retaining that clause which had been added by the Committee. We must remember that all these questions were fully discussed by the Congress at Washington in a three days' session, and that there was a full representation, as full as could possibly be expected, of the different States in the Union, 42 States out of 45 being represented. We have here 19 States represented out of 45. How many States are there represented at this meeting, Mr. Secretary?

The SECRETARY: 21 States reported, but there have been only 19 States voting at to-day's session.

JOHN C. RICHBERG, Illinois: With that number of States represented at Washington, and this small number represented here, it seems to me that we are making a very hazardous departure in attempting to upset the deliberate judgment of that Congress at Washington, under whose directions this act has been drafted.

There is another suggestion, and that is this—that by the adoption of this uniform code which we are all in favor of, and which I trust we will labor to have adopted, by every State in the Union, and which now is the law in forty States of the Union, there is no necessity for a clause of this kind or character; a wife residing in any one of these States could secure her divorce just as readily as if she returned to her original domicile. There are only three jurisdictions into which she could be required to remove by her husband where she would not have the same opportunity. And we must

legislate for the majority, for the good of all, and not for the exception. The exception would be South Carolina, which has no code whatever, and to which but few people emigrate; and the District of Columbia, and of course the great State of New York. But if the great State of New York finds that she stands alone among the rest of the States of the nation, I apprehend, and what is our desire, she will also adopt a uniform code, and by adopting a uniform code give her citizens that relief which she has denied to them since the days of the Revolution—for one hundred years, as one of the delegates stated; but her citizens have sought that relief nevertheless, and have been forced to obtain it, by going to other States of the Union, notably Rhode Island, New Jersey, South Dakota, Illinois, and there they have obtained the relief; and it is time that the State of New York should have a code of divorce which substantially represents the moral sentiment of the community of the United States.

TALCOTT H. RUSSELL, Connecticut: It seems to me the trouble in this case is what might be called an absence of mental perspective. I feel very strongly on this matter; my sympathies at first were very strongly enlisted by the statement of the delegate from Michigan as to a particular case of hardship that had occurred. But we ought not to be called upon to legislate, and change this law in view of that particular case of hardship, unless such cases are likely to occur so often that such change becomes necessary. I think, in the majority of cases of the sort described, the cause of divorce would continue, cases of drunkenness, for example, after the wife removed to her original domicile; in such case as that she would have relief, I take it, under the statute as it stands. In the single case of an injury that might have been inflicted, a blow, or cruelty, or something of that sort, it might be difficult for her to obtain the relief in all cases; but I think the trouble is we are paying too much attention to an individual case when similar cases are not likely to occur often enough to make it worth while to change the statute.

SENECA N. TAYLOR, Missouri: When the amendment was first read, it struck me rather forcibly. The longer I think about it, the less I am in favor of it. The longer I think about it, the more I realize that it is to meet special cases that now and then may occur, and probably will. But we are not to forget that it is impossible to pass a law under which some hardship will not arise. But a law is made to meet universal cases, and there may be here and there an exception that it cannot meet. If we undertake to meet the exceptional cases, we spoil our law. Suppose this case: New York grants divorce for only one cause; a young lady has gone to New York, married, say, in the State of Ohio or Missouri, and gone to New York to live. She becomes infatuated with somebody else; she

wants a divorce; she has not the scriptural grounds on which to base it. She goes home and says she is abused, and she stays there two years, and applies in the State of Missouri for a divorce. Under this proposed exception, there is a remedy provided whereby she could get that divorce. Or suppose the case where she went to South Carolina to live, and she has become dissatisfied for some cause, and she says, "I will go to my home," which we will say is South Dakota, and she stays a couple of years and applies for a divorce. You are opening all this, which is one of the things we seek to avoid, a chance for a migratory divorce, beyond all question in my mind; at least it looks so to me. That is one of the things we want to avoid. Now the idea of shaping this statute so that it will never work hardship on anybody is beyond human ken.

F. H. BUSBEE, North Carolina: I think the language of the amendment is somewhat involved, and too minute. It seems to me the language suggested by the distinguished gentleman from Pennsylvania at the last session of the Congress would perhaps cover the views of the majority of this amendment. On page 91, he suggested a substitute amendment to the gentleman from Louisiana, and which Mr. Hart accepted, which would answer the purpose better. I quote from page 91 of the record:

"2. When the courts are given cognizance of suits where either of the parties was domiciled in a foreign jurisdiction at the time the cause of complaint arose, it should be insisted that, excepting in cases of adultery, or in the case of a wife's returning to her original domicile, relief will not be given unless the cause of divorce was included among those recognized in such foreign domicile."

It is impossible to pass any law which will cover cases of individual hardship. That we must recognize. It is impossible to pass any statute so that it cannot be abused, or made the vehicle of some evasion of the law. That we must recognize. But I apprehend that the migratory divorce is very rarely adopted by the injured wife's returning to the only place left her upon earth, the arms of her mother and the arms of her father. She ought, I think, to be able to return to the home which she left as a bride; and if the laws of the State of original domicile granted divorce for extreme and intolerable cruelty, if she had that right in the place of her marriage and the home of her father, she ought not to lose it by marrying into a State which does not recognize that cause. I think, if the language suggested by the gentleman from Pennsylvania in his resolution, though not in the form of a statute, were added to paragraph b, it would serve the purpose of this amendment.

The PRESIDENT: What is your thought about the argument of the gentleman from Illinois, that if this statute be adopted by the

States, there will be no necessity of going from one State to another, or returning to the home domicile?

F. H. BUSBEE, North Carolina: It is a very powerful argument, and it would render this amendment absolutely useless. But I would like to hear from the gentleman from New York as to the probabilities of the adoption of this statute in the State of New York. I should like to hear from our absent friends from South Carolina as to the possibilities of its adoption there. I should like to hear from every member of the Congress whether he is so optimistic as to think that the adoption of this statute will be universal, or even general. All of us, I apprehend, will try to get the statute passed in the various States; but the Congress must recall that they have expressly advised against the extension of causes in any single State which now has fewer causes; they have put themselves on record, in opposition to the argument of my friend from Illinois, by stating that the Congress does not ask a single State to enlarge, but rather to restrict the number of these causes. So that I answer the query of the President by saying that it is utterly impracticable to think that there will be a uniform statute as to causes. Now, then, shall we say to the wife who returns to the bosom of her family that she is to be put upon the same plane as the lady of fashion who goes from New York to South Dakota, or any of the western States? The difference between them is as wide as the poles. It is not a migratory divorce to return to her home. I think if we adopted this simple language, if we used the words "in this State" it would really cover the case cited of a wife returning to her former domicile; or if we used the language suggested by the gentleman from Pennsylvania of a wife being compelled to return to her original domicile in this State, would not that cover the ground?

VICE-CHANCELLOR EMERY, New Jersey: "Or the wife, being the plaintiff, has returned to her original domicile in this State?" I think it would cover it much better than the amendment before the House, and I was just about to call attention to the fact that the way this amendment is drawn—will the Secretary read the words?

The SECRETARY: "And provided further, That an injured wife having returned to her ante-nuptial domicile may be granted relief according to the laws of such domicile."

VICE-CHANCELLOR EMERY, New Jersey: That would not do it at all.

F. H. BUSBEE, North Carolina: I would suggest "Or the wife, being plaintiff, has returned to her original domicile in this State."

VICE-CHANCELLOR EMERY, New Jersey: I think that reaches it. I would not delay the Congress but for the suggestion of one point that has not been brought out in any of the remarks.

The PRESIDENT: Unfortunately, the suggestion of the gentleman from North Carolina is not yet before the Congress.

F. H. BUSBEE, North Carolina: I move as an amendment in place of the amendment, if it be seconded, unless it is accepted, of the words "Or the wife, being plaintiff, has returned to her original domicile in this State."

Duly seconded.

The PRESIDENT: Does the mover of the amendment accept the suggestion of the gentleman from North Carolina?

REV. CAROLINE BARTLETT CRANE, Michigan: I am in doubt about the words "original domicile" in place of "ante-nuptial domicile," not being a lawyer; and I get contrary views on all sides of me; I should like to get a little light on it.

The PRESIDENT: If I understand the delegate from Michigan, she does not accept the amendment to the amendment?

A MEMBER: The delegate from Michigan wants to be protected against her counsel.

REV. CAROLINE BARTLETT CRANE, Michigan: I agree to that if it is put "ante-nuptial."

The PRESIDENT: Does the seconder accept it also?

PERCY WERNER, Missouri: He does.

The PRESIDENT: The Secretary will now read the amendment in its changed form.

The SECRETARY: "Or the wife, being plaintiff, has returned to her ante-nuptial domicile in this State" to be added to paragraph b.

FRANK H. KERR, Ohio: I think as it now reads it is inadequate to the cause proposed by the member from Michigan in this particular—

The PRESIDENT: The gentleman from Ohio is advising the delegate from Michigan not to do what she has done?

FRANK H. KERR, Ohio: No; I am only speaking about the inadequacy of the remedy. Suppose the parents of that young lady no longer live in the State where she was married? Suppose they

have moved from Michigan to Ohio; then this would avail her nothing if she went back to her parents, who no longer live in Michigan.

F. H. BUSBEE, North Carolina: If the parents are migratory, it would not.

FRANK H. KERR, Ohio: She would have to go back to the original domicile or the ante-nuptial domicile, which would be Michigan. It might well be that her father was a clergyman; she was born in Michigan and lived there when she was married, and by the migratory condition of the parents' life, they have gone to Ohio. Now, then, she could not go back to her ante-nuptial residence to avail herself of anything of the kind, if she wanted to go back to her parents. I would propose that instead of ante-nuptial domicile the words should be "the domicile of her parents;" then she could go back and get relief.

AMASA M. EATON, Rhode Island: Supposing both of them died?

FRANK H. KERR, Ohio: Then she is out entirely.

The PRESIDENT: There is nothing before the Congress—we will have to come to order—there is nothing before the Congress except the amendment by the gentleman from North Carolina, and which has been accepted by the delegate from Michigan and her second, and I shall have to confine the Congress to argument on that proposition.

FRANK H. KERR, Ohio: I was about to make a motion to amend the amendment by adding after the words "ante-nuptial domicile" the words "or the domicile of her parents;" that would cure it, without injuring the case at all.

The PRESIDENT: Is that motion to amend the amendment seconded?

REV. CAROLINE BARTLETT CRANE, Michigan: I accept that amendment if it is "ante-nuptial domicile" or "the domicile of her parents." I think the gentleman's proposition was to substitute "domicile of her parents." I am willing to accept that addition to the amendment.

VICE-CHANCELLOR EMERY, New Jersey: That comes exactly in the line of the suggestion which I was about to make, and it was to call the attention of the Congress to a matter which does not seem to me to have been very squarely suggested in any of the remarks made by the members in the debate up to this point. These

sections, 7, 8, 9 and 10, were intended to give as a whole the cases where jurisdiction would be allowed in the different States; and taken in connection with section 23, as to the effect to be given to foreign decrees, they do form a complete and uniform system of giving jurisdiction and recognizing the effect of foreign decrees. That general system could perhaps be best shown by reading the clause relating to the effect to be given to foreign decrees, which is as follows:

Section 23. Effect of.

"Full faith and credit shall be given in all the courts of this State to a decree of annulment of marriage or divorce by a court of competent jurisdiction in another State, territory or possession of the United States when the jurisdiction of such court was obtained in the manner and in substantial conformity with the conditions prescribed in sections 7, 8, 9 and 10 of this act. Nothing herein contained shall be construed to limit the power of any court to give such effect to a decree of annulment or divorce by a court of a foreign country as may be justified by the rules of international comity: Provided, That if any inhabitant of this State shall go into another State, territory or country in order to obtain a decree of divorce for a cause which occurred while the parties resided in this State, or for a cause which is not ground for divorce under the laws of this State, a decree so obtained shall be of no force or effect in this State."

That system carries out the final result of a two or three days' debate upon this whole question in the Congress at Washington, and that was the main question which we were called together to agree on. On this particular exceptional question now presented the vote of my State was given in favor of the amendment; so that, so far as the special particular question was concerned, its equity appealed to us. But, is it not apparent, from the difficulty of drawing the terms of your exception, that you are introducing here something which imperils this whole scheme. I have not the most remote idea that the mover of this resolution would think of such a thing. Look for a moment at the whole scope of these resolutions. Over and over again this principle was declared that where the plaintiff or the defendant was domiciled in a foreign jurisdiction at the time the cause of complaint arose, relief should not be given unless the cause of divorce was included among those recognized in such foreign domicile. And that proposition, after a full and complete debate, closely argued for two or three days, was accepted as the final settlement of the question; and the record will show that then the States adopted the proposition almost unanimously. A large number of the gentlemen who participated in that debate are not here to-day, as they might have been had they supposed that that great

substantial fundamental question was to be re-argued and re-opened; and if put in different terms, let it be done with the responsibility that the possibility of the adoption of the uniform law is gone. A ready excuse is offered by some State or some gentlemen of a State not here to-day to say, "Why, we argued this in Washington in a full Convention of the States; it was the great question, the question of jurisdiction against the absent party, and the effect to be given to decrees against persons not served with process; and we all finally agreed that, leaving out, for the purpose of settling a great principle, the special exceptional cases, we must strike the general principles of justice on which we could all agree; and, in order to prevent the danger of collusive, migratory divorces, and in order to fix a basis for recognizing foreign decrees on the principles of justice, we all finally agreed that those were the terms." Why, one of the strongest arguments against the adoption of the amendment, as I recall it, was made by one of the representatives from New York, the one to whose suggestion, as a member of the Committee on Resolutions, our second resolution owes its form; and we might possibly have his assistance in the adoption of this code, but he is not here to-day. It is true, there may be exceptional cases of hardship, but would it be possible under any law to prevent it?

I was about to call the attention of the Congress to the fact that this amendment to paragraph b in this section would, I take it, call for the same amendment to section 10 about jurisdiction by publication in actions for divorce, so that you will throw out the whole scheme. Let me call attention to the distinct resolutions passed in Washington.

The second resolution.

"2. When the courts are given cognizance of suits where the plaintiff was domiciled in a foreign jurisdiction at the time the cause of complaint arose, it should be insisted that relief will not be given unless the cause of divorce was included among those recognized in such foreign domicile."

And the same provision was made as to the defendant.

With reference to the question of foreign decrees which is so connected with it that the two are one, the resolution was as follows:

"16. Each State should adopt a statute embodying the principle contained in the Massachusetts act, which is as follows: 'If an inhabitant of this Commonwealth goes into another State or country to obtain a divorce for a cause which occurred here while the parties resided here, or for a cause which would not authorize a divorce by the laws of this Commonwealth, a divorce so obtained shall be of no force or effect in this Commonwealth.'"

Personally, so far as an individual case might appeal either to the judgment of a member, or of a court in applying the law of the

particular States, the particular case of hardship might be such as to induce the most liberal construction of the law, yet I thing the vote of the States upon this amendment must be taken in view of the resolutions to which I have called attention. We stand at a somewhat critical point of the whole proceeding, and the vote on this amendment should therefore be taken with a proper sense of the responsibilities of the action.

REV. CAROLINE BARTLETT CRANE, Michigan: I wish to answer some objections which have been made, and which have arisen since I spoke before, if I may be allowed to do so.

VICE-CHANCELLOR EMERY, New Jersey: I move that unanimous consent be given.

The PRESIDENT: There being no objection, the delegate may proceed.

REV. CAROLINE BARTLETT CRANE, Michigan: I wish to say, first, that if the acceptance of the suggested clause to the amendment is going to imperil the amendment as I moved it, I am sorry that I accepted; I would be satisfied to have it pass in the form I put it. I perhaps too hastily consented.

I wish to answer the objection as to the privilege of sex. I am not pleading for the privilege of sex. I am pleading for something to offset the privilege of sex which a man enjoys when he takes the wife he has married to any State which he desires for a residence. There is a privilege of sex infinitely greater than what we ask for a wronged wife returning to her home, and seeking redress in that State.

With regard to reversing the decisions at Washington, we have had examples of that here this morning and yesterday. The Committee on Resolutions did not hesitate to depart from the rulings of that Congress when they chose to do so. There is more than one instance, as I am informed, in the resolutions presented here where things have been dropped out and things added—

WALTER GEORGE SMITH, Pennsylvania: I must interrupt the lady at this point to ask her to state just what she refers to, because the bases her argument upon a statement of fact, and I think she will recognize the propriety of my request.

REV. CAROLINE BARTLETT CRANE, Michigan: I understood that on page 6, the latter half of paragraph d, which was afterwards denominated paragraph e, was added by the Committee.

WALTER GEORGE SMITH, Pennsylvania: Added by the Committee?

REV. CAROLINE BARTLETT CRANE, Michigan: And it was stricken out again.

WALTER GEORGE SMITH, Pennsylvania: That was added by the Committee, it is true, with the explanation to the Congress that it was a suggestion from the Committee. The Committee, yesterday morning made the utmost explanation, and the fairest explanation, as to just where they stood. If the delegate had then been present, she would not have made the statement she has just made.

REV. CAROLINE BARTLETT CRANE, Michigan: I still maintain that this suggestion was made; and the Chairman of the Committee has also said, as he claims, that his remark was with great hesitation, that his Committee had considered this matter very carefully, and therefore great weight should be given. Now, I want to say also that another member of the Committee this morning told me that this would be done, and this would not be done at all. Well as large a Committee as that should be able to know what should be done, and he gave me to understand it would be absolutely useless to bring this matter up on the floor, because the Committee had decided against it. Now, the argument goes both ways. One gentleman argues because there are forty States that are in comity, the number protected by the suggested amendment is so small, it does not matter. Another gentleman says that the number is so large that we are opening the doors on every side. I do not think one argument ought to offset the other. Certainly, if New York thinks that all the other States will toady to her idea on this subject, there is no reason whatever to change her basis and to come into comity with the other States. With regard to the opinions of the former Congress, I do not know why this Congress is assembled if we have not the right to use our own judgment, if the new members have not the right to use their own judgment upon these matters. Certainly, if the former members are not here, it is not our fault, not the fault of those who have come here, perhaps, because they have this matter especially at heart. I think that full faith and credit should be given to the new delegates, especially when we consider that the motion on this subject was lost by a single vote. With regard to the particular case, I am almost sorry I cited one particular case; that was a single instance of numerous cases which might occur. Of course, it might be right that a young lady contemplating matrimony should look up the laws of the State to which her fiance desires to take her; but, I fancy if she did, such marriage would hardly take place. The object of this Convention, it seems to me, is to make divorces harder for those who ought not to have them, not to put needless and cruel obstacles in the way of people who

are wronged. Certainly, my conception of the object of this meeting is not to do that latter thing, but to guard against every evil which we can in the way of divorce, not to make it impossible for a wronged and innocent person to obtain redress when returning to the ante-nuptial home.

The SECRETARY: As bearing upon this subject matter, I would like to call the attention of the Congress to page 200 of the proceedings:

"Resolved, 1. That the resolutions adopted by this Congress on the subject of divorce, be referred to the Committee on Resolutions, with instructions to embody them in a statute to be submitted eventually as a uniform statute on the law of divorce to all of the States.

"2. That when this duty shall have been performed, the Chairman of the Committee shall communicate the fact to the Governor of Pennsylvania, the President of this Congress, with the request that he call the Congress together to consider the proposed statute.

"3. That copies of the proposed statute be printed, and distributed to each delegate to this Congress at least thirty days before the date set for its re-convening as herein provided for."

Now, I am not saying anything as to the power of this Congress to change the action of the Congress at Washington; but I do know that the attendance at this session of the Congress has been very seriously affected, because members in attendance at the session in Washington believed that this session was simply called to judge whether the Committee on Resolutions and the officers, as a general Committee, had drafted a statute which did embody the principles declared by the Congress at Washington; and if it had been thought that at this re-assembling of the Congress the whole question so fully discussed at Washington would be re-discussed, we would have had possibly double the attendance that we have now. From correspondence, as well as from statements made to me as Secretary, I feel satisfied that many of our absent members believed that the object of this assembling of the Congress was simply to consider whether these resolutions on page 200 of our proceedings had been faithfully carried out by the members of the Committee.

The question being called, and being on the proposed amendment, namely, the addition to paragraph d of the words "or where the wife, being plaintiff, has returned to her ante-nuptial domicile in this State, or the domicile of her parents," a division was called for, and the Secretary announced 10 delegates voting aye and 15 no, whereupon the Chair declared the amendment lost.

REV. CAROLINE BARTLETT CRANE, Michigan: In order that we may be on record in this matter, I move a vote of the States be taken.

Seconded by Mr. Eaton, of Rhode Island.

The Secretary then proceeded to call the roll of the States upon the vote on the amendment, and when Delaware was reached, Mr. Nields said:

"In the Congress the vote of the State of Delaware was against the resolution; I am in favor of it, but I will have to vote no."

When Minnesota was reached, Rev. Mr. Haupt said:

"I would like to explain my vote. I am in favor of this amendment if it can be carried out consistently with the provision of the statute as to foreign decrees, but believing it cannot, I vote against it."

Upon reaching Missouri, Mr. Taylor said:

"Missouri is divided, and I suppose we cannot vote at all. I am against the amendment, and my colleague is for it."

Upon reaching New York, Mr. Terry said:

"My position is the same as that of the gentleman from Minnesota. If this amendment could be adopted consistently with the rest of the resolutions reported by the Committee, I should vote for it. To my mind, it cannot be so adopted, and therefore I vote no."

Upon reaching Rhode Island, Mr. Eaton said:

"I must explain my vote, because I argued in favor of this amendment. I find my reasons are overcome by the arguments presented to the contrary. Personally, I should favor it; but, owing to the force of the arguments against it, and the possibility of its opening the door to other larger abuses, I shall be obliged to vote no."

Upon reach Utah, Mrs. Siegel said:

"I vote no, and I must explain my vote. I certainly want to benefit my sex in every way, but I feel much harm would come from the adoption of this amendment."

The roll call being finished, the Secretary reported 7 States voting aye and 11 no; whereupon the Chair declared the amendment again lost.

The question then being upon the adoption of paragraph b as reported, it was carried.

WALTER GEORGE SMITH, Pennsylvania: I now move the adoption of section 8, which includes paragraphs a and b, just approved.

The Secretary thereupon called the roll of States, and having completed the call, reported 19 States voting aye and none no; whereupon the Chair declared section 8 adopted.

WALTER GEORGE SMITH, Pennsylvania: I now move the adoption of section 9, relating to publication in cases of annulment.

Duly seconded.

The PRESIDENT: We have heretofore been going through the different paragraphs of the sections until we came to the close of a section, and then voted upon the adoption of the section by States. It seems perfectly useless to take a vote on a section where there is but a single paragraph, and then another vote by States. If the Congress desires to vote by States, a motion to that effect should be made.

VICE-CHANCELLOR EMERY, New Jersey: May I make a suggestion. The course suggested by the Chairman has been followed where a section has been divided into different paragraphs; there a vote on each paragraph was had, and then when the entire section was ready for action upon it, the vote was taken by States. But as sections 9 and 10 are so closely related, I would ask that the vote of the States to be taken upon the adoption of the two sections at the same time.

WALTER GEORGE SMITH, Pennsylvania: In accordance with this suggestion, I move the adoption of sections 9 and 10, and call for a vote of the States; calling attention, first, to the fact that there is a misprint in the fifth line of section 10, which should read "or from bed and board," instead of as printed.

Duly seconded.

The Secretary thereupon read sections 9 and 10, as follows:

"Section 9. By Publication in Actions for Annulment.

"When the defendant cannot be served personally within this State, and when at the time of the commencement of the action the plaintiff is a bona fide resident of this State, jurisdiction for the purpose of Annulment of Marriage may be acquired by publication, to be followed where practicable, by service upon or notice to the defendant without this State, or, by additional substituted service upon the defendant within this State, as prescribed by law.

"Section 10. By Publication in Actions for Divorce.

"When the defendant cannot be served personally within this State and when at the time of the commencement of the action the plaintiff is a bona fide resident of this State, jurisdiction for the purpose of divorce, whether absolute or from bed and board, may be acquired by publication to be followed where practicable by service upon or notice to the defendant without this State, or by additional substituted service upon the defendant within this State as prescribed by law, under the following conditions:

a. When, at the time the cause of action arose, the plaintiff was a bona fide resident of this State, and has continued so to be down to the time of the commencement of the action; except that no action for absolute divorce shall be commenced for any cause other than adultery or bigamy, unless the plaintiff has been for the two years

next preceding the commencement of the action a bona fide resident of this State.

b. When, since the cause of action arose, the plaintiff has become, and for at least two years next preceding the commencement of the action has continued to be a bona fide resident of this state: Provided, The cause of action alleged was recognized in the jurisdiction in which the plaintiff resided at the time the cause of action arose, as a ground for the same relief asked for in the action in this State."

The Secretary thereupon called the roll of the States, and, having completed the roll, announced 19 States voting aye, and none no; whereupon the Chair declared the sections adopted.

WALTER GEORGE SMITH, Pennsylvania: I do not want to provoke a debate, but my friend from Missouri, my colleague upon the Committee on Resolutions, calls my attention to the fact that the change of the word "and" to "or" in the third line of section 4, paragraph d, which makes it read, "extreme cruelty on the part of either husband or wife, such as to endanger the life or health of the other party, or render cohabitation unsafe," makes that paragraph inconsistent with paragraph d of section 3, and he wishes the same change made; and I ask unanimous consent to make the change. If there is any objection, I shall withdraw this request.

VICE-CHANCELLOR EMERY, New Jersey: I call attention to the fact that it is not inconsistent, because the two paragraphs relate to two different subjects; one is divorce *a mensa* and the other divorce *a vinculo* and I think, when I suggested that the "and" would be construed "or" possibly in the other section, it was said that it did not make any difference.

WALTER GEORGE SMITH, Pennsylvania: Does the gentleman object to changing "and" to "or?"

VICE-CHANCELLOR EMERY, New Jersey: I do not object to it at all, so far as the application in our own State is concerned.

CHARLES THADDEUS TERRY, New York: I object to that.

WALTER GEORGE SMITH, Pennsylvania: Therefore, I do not press it.

PERCY WERNER, Missouri: I ask for a vote on the matter.

WALTER GEORGE SMITH, Pennsylvania: I rise to a point of order; the regular order of business is something else: I asked this by unanimous consent, and when that is withheld, I withdraw my request.

PERCY WERNER, Missouri: I give notice now that I shall move to amend by changing the word "and" to "or" before the adoption of the statute as a whole.

WALTER GEORGE SMITH, Pennsylvania: I accept notice on behalf of the Committee.

I now move the adoption of section 11.

Duly seconded.

The Secretary then read section 11, as follows:

"Section 11. Particeps Criminis may be Made a Party.

"Any one charged as a particeps criminis shall be made a party, upon his or her application to the court, subject to such terms and conditions as the court may prescribe," and proceeded to call the roll of the States, and having completed, announced 18 States voting aye, and none no; whereupon the Chair declared section 11 adopted.

WALTER GEORGE SMITH, Pennsylvania: I now move the adoption of section 12.

Duly seconded, and the section read by the Secretary as follows:

Section 12. Hearings.

All hearings and trials shall be had before the court, and not before a master, referee, or any other delegated representative; and shall in all cases be public.

The Secretary proceeded to call the roll of the States, and when New Jersey was reached, Vice-Chancellor Emery said:

"Our New Jersey constitution is so peculiar in reference to this matter that I desire to place the delegates from New Jersey upon record as voting no. This section applies to most of the States, but we shall have to vote no, because, under present conditions, and until our constitution is changed, it would be impracticable in our State. It does not affect the other States at all."

When South Dakota was reached, President Warren said:

"Private hearings are a great scandal in South Dakota, and I vote emphatically aye."

Having completed the roll call, the Secretary announced 17 States voting aye, and one State no; whereupon the Chair declared section 12 adopted.

WALTER GEORGE SMITH, Pennsylvania: I now move the adoption of section 13.

Duly seconded.

The section was then read by the Secretary, as follows:

Section 13. Attorney, Appointment of by Court.

In all uncontested cases, and in any other case where the court may deem it necessary or proper, a disinterested attorney may be assigned by the court actively to defend the case.

The Secretary proceeded to call the roll of the States, and announced that 18 States voted aye, and none no; whereupon the Chair declared section 13 adopted.

WALTER GEORGE SMITH, Pennsylvania: I now move the adoption of section 14.

Duly seconded.

The Secretary then read section 14, as follows:

Section 14. Proof Required.

No decree for annulment of marriage, or for divorce, shall be granted unless the cause is shown by affirmative proof aside from any admissions on the part of the defendant.

The Secretary then proceeded to call the roll of the States, and announced 18 States voting aye, and none no; whereupon the Chair declared section 14 adopted.

WALTER GEORGE SMITH, Pennsylvania: I now move the adoption of section 15.

Duly seconded.

The Secretary then read the section, as follows:

Section 15. Impounding of Record and Evidence.

No record or evidence in any case shall be impounded, or access thereto refused.

The Secretary then proceeded to call the roll of the States, and announced that 18 States voted aye, and no State no; whereupon the Chair declared section 15 adopted.

Adjourned.

SECOND DAY

Afternoon Session.

The Congress re-convened at 2.30 o'clock, p. m., President Pennypacker in the Chair.

The PRESIDENT: The regular order of business is the consideration of section 16, with regard to decrees nisi.

WALTER GEORGE SMITH, Pennsylvania: I move the adoption of sections 16 and 17 together.

The PRESIDENT: What is the force of the word "of" in the first line of section 16?

WALTER GEORGE SMITH, Pennsylvania: I suppose the correct rendering of that phrase would be "after the hearing of any cause," and I will ask unanimous consent to insert the word "the" before "hearing."

ERNEST MERTON, Wisconsin: I would like to inquire in connection with this matter whether this final decree is a decree that liberates both parties?

WALTER GEORGE SMITH, Pennsylvania: Yes, sir.

ERNEST MERTON, Wisconsin: It frees both husband and wife, gives the same privilege to the wrongdoer as to the innocent one?

WALTER GEORGE SMITH, Pennsylvania: Yes, sir.

The motion to adopt sections 16 and 17 was then duly seconded, and the Secretary read as follows:

Section 16. Rule for Decree *Nisi*.

If after the hearing of any cause, or after a jury trial resulting in a verdict for the plaintiff, the court shall be of opinion that the plaintiff is entitled to a decree annulling the marriage, or to a decree for divorce from the bonds of matrimony, a decree *nisi* shall be entered.

Section 17. Final Decrees, Entry Of.

A decree *nisi* shall become absolute after the expiration of one year from the entry thereof, unless appealed from or proceedings for review are pending, or the court before the expiration of said period for sufficient cause, upon its own motion, or upon the application of any party, whether interested or not, otherwise orders; and at the expiration of one year such final and absolute decree shall then be entered upon application to the court by the plaintiff, unless prior to that time cause be shown to the contrary.

The Secretary thereupon proceeded to call the roll of the States, and, after completing the same, announced that 15 States had voted aye, and no State no; whereupon the Chair declared sections 16 and 17 adopted.

WALTER GEORGE SMITH, Pennsylvania: I now move the adoption of sections 18 and 19.

Duly seconded.

The Secretary then read the sections, as follows:

Section 18. Decree *a Mensa*, Terms Of.

In all cases of divorce from bed and board for any of the causes specified in section 4 of this act, the court may decree a separation forever thereafter, or for a limited time, as shall seem just and reasonable, with a provision that in case of a reconciliation at any time thereafter, the parties may apply for a revocation or suspension of the decree; and upon such application the court shall make such order as may be just and reasonable.

Section 19. Former Name of Wife.

The court upon granting a divorce from the bonds of matrimony to a woman may allow her to resume her maiden name, or the name of a former deceased husband.

The Secretary thereupon called the roll of the States, and, having completed the same, announced 15 States voting aye, and no State no; whereupon the Chair declared sections 18 and 19 adopted.

ADOLPH SLOMAN, Michigan: I desire, at this stage, to move an amendment to Article IX, by adding thereto a section to be known as section 20, which I present in this form, but which can be changed if it is thought the language does not meet the requirements:

Section 20. No decree of divorce, interlocutory or final, shall be granted in any divorce suit in which there are minor children, until due and timely notice of the pendency thereof and the hearing thereon shall have been given to the prosecuting attorney, county attorney or other disinterested attorney appointed by the court of the county in which the proceedings are pending, and a reasonable opportunity afforded to appear and represent the interests of such minor children.

SENECA N. TAYLOR, Missouri: I second the motion, for the purpose of getting the matter before the Congress.

WALTER GEORGE SMITH, Pennsylvania: I cannot accept the amendment on behalf of the Committee on Resolutions, because we have not had it before us at all. If the Congress accepts it, it must accept it on its own responsibility.

TALCOTT H. RUSSELL, Connecticut: This would be entirely unsuited to the practice of Connecticut. It puts on the State's attorney, a criminal officer, an entirely new set of functions. It makes a different officer of the State's attorney as his functions are understood in our State; and I thing it would be entirely inadequate in Connecticut.

The PRESIDENT: In the States where such notice is given, does not the guardian represent the children?

ADOLPH SLOMAN, Michigan: There may be no guardian appointed for the minor children.

The PRESIDENT: Do you not ask for the appointment of a guardian ad litem?

ADOLPH SLOMAN, Michigan: In my State, it is required that a copy of the subpoena be served upon the prosecuting attorney; and in no instance does the court grant a divorce unless there is a certificate from the prosecuting attorney's office to the effect that he has investigated the circumstances and condition of the children, and gives his opinion as to which party shall have the custody of the

children, and what provisions shall be made for their welfare. Now, it has been said here repeatedly that the State is party to the marriage and party to a divorce; and the State is interested very largely in the welfare of the minor children, who are likely to become either a public charge, or are likely to be placed in the custody of one or the other of the parties who is ill suited to look after their welfare. This Congress has passed a provision giving the court authority to appoint a disinterested attorney in uncontested cases, and in other cases, where the court may see fit, to defend the action; but nowhere has there been provision made for some one who may look after the interest of the minor children. It is assumed that the court of chancery, which is supposed to be the guardian of minor children, would ordinarily attend to that, but it is absolutely impossible, in the numerous divorce cases presented to the court, for the court in the little time it might have, or with the parties simply before it, to inquire fully into the situation and circumstances of those children; whereas, either the prosecuting attorney, or in counties where there is no prosecuting attorney, the county attorney, or if neither of these, then a disinterested attorney of the court, having ample time, may come forward and inquire into the circumstances, and present the interest and welfare of these children to the court. It is for that reason that I submit this amendment.

PERCY WERNER, Missouri: I thoroughly agree with the gentleman who has just taken his seat that the most important consideration in any divorce proceeding is the proper care of the rights of the minor children involved; and if there were no other provision in this act for looking after their interests, I would heartily support that amendment. I find, however, in section 13 already adopted a provision that in all uncontested cases, and in every case where the court may deem it necessary or proper, a disinterested attorney should be appointed. Obviously, all cases where the rights of minor children are involved are such proper cases: It may be that it might have been well in section 13 to have directed attention to the cases where the rights of minor children are involved; and I would think it preferable at the proper time to amend section 13, so as to call attention to those cases, rather than overload this statute with an additional provision. But if it were thought better to provide for this in a special section, such as proposed by the gentleman from Michigan, I would vote in favor of it.

VICE-CHANCELLOR EMERY, New Jersey: I have a suggestion to make in reference to the proposed amendment. This is purely a matter of procedure, and depends in each State upon the considerations which are thought necessary in that State to guard against the action of its courts. Speaking for the practice in my own State,

where there is no such thing as a county jurisdiction, where every suit is brought in the court of chancery which has jurisdiction over the whole State, there are no prosecuting attorneys; and in the decision of each case the court would consider as one of the factors upon which the importance of the case hinged this situation with reference to children. We do that so constantly that even when a decree of divorce is granted on one side or the other, we make no decree with reference to permanent custody of the children, except upon a special hearing; and the court of chancery is specially charged with everything pertaining to the care, custody and maintenance of these children. Now, it is possible that in some States the courts to which they give jurisdiction in divorce are unable, by reason of the pressure of other business, to give to this particular class of cases the attention which they deserve. It may be that in those States additional provisions as to a proper procedure should be added. There is nothing in this statute that will prevent a State, the State of Michigan, for example, from incorporating in this act all those provisions specially applicable to the procedure in its own State. But we are now attempting to agree on those general principles applicable to all States, relating to the jurisdiction, and so far as possible, the Committee on Resolutions in their final meeting determined to eliminate as far as practicable all those provisions which were purely procedure. It perhaps might be a matter of interest to the Congress to be informed—and I will refer here again to what the Chairman said in his report—that the original draft of the bill which we proposed to submit contained a complete procedure act, but it was found that the circumstances and the conditions were so different that finally, on the full meeting of the Committee, they absolutely cut out three-fourths, or perhaps nine-tenths, of the act, so as to eliminate the procedure sections. Section 13, I think, as the delegate from Missouri has said, would of itself authorize the court to do it, if that act was passed. The prosecuting attorney, speaking in reference to its applicability in my own State, the prosecuting attorneys of the different counties, have their time so much occupied with other business, I doubt whether the interest of the children would be so well taken care of as when committed to the court itself. The court exercises the powers of a court of chancery, which includes the oversight or special protection to the children. I think that was the idea in the preparation of this final report, to eliminate, as far as possible, everything which might be thereafter supplied by special provisions as to procedure.

ADOLPH SLOMAN, Michigan: May I be permitted just one word more? I appreciate very fully the able remarks of the Vice-Chancellor; but we have provided in procedure for the appointment of an

attorney to defend the cause in circumstances where collusion might exist, or where there was reason the court should be informed of the situation, and a defense should be interposed. We made that provision, notwithstanding that that is a matter wholly of procedure. Why, then, should a provision which contemplates the care and welfare of the minor children be considered of any less moment than that which related to the appointment of an attorney who should defend the cause? Not only that, but it is a fact which is known to the members of the Bar throughout the United States that in some jurisdictions records have been established where divorces have been granted within the period of practically ten minutes, and a number of them, one after another, where it is utterly impossible for a court to inform itself fully with regard to the condition of the children and what best represents their future welfare. In the jurisdiction of my friend, the Vice-Chancellor, it may be that every safeguard is thrown about minor children in divorce cases, and I have no doubt that every safeguard is thrown about them; but there are States where there is not that protection thrown about them; and we are establishing, or seeking to establish, a uniform law throughout the States, and we are not seeking to reach States like that represented by the Vice-Chancellor, where not only the rights of the parties involved in the divorce, but the rights of children are amply protected, but we are seeking to reach more particularly that class of States where there is not that full protection that exists in the State of New Jersey.

WALTER GEORGE SMITH, Pennsylvania: I only want to make one remark to set my friend at rest as to why we introduce anything at all as to procedure. That was in order to comply with the direct instructions from the Congress on those particular points of procedure. We endeavored to explain that in the report submitted yesterday.

The Secretary then called the roll of the States upon the motion to adopt proposed new section 20, and afterwards reported 2 States voting aye, and 15 States no; whereupon the Chair declared the motion lost.

WALTER GEORGE SMITH, Pennsylvania: I now move the adoption of sections 20 and 21.

Duly seconded.

The Secretary then read sections 20 and 21 as follows:

Article X.—Appeals.

Section 20. From What Decrees.

Appeals or proceedings for review may be taken only from decrees *nisi*, either for annulment of the marriage, or for divorce, whether

from the bonds of matrimony or from bed and board, and not from final decrees, unless objection to granting the same be made as provided by section 17 of this act.

Section 21. From Orders for Permanent Alimony, and Orders Relative to Children.

Appeals or proceedings for review may also be taken from all orders for payment of permanent alimony, and from all orders relative to the care, custody and maintenance of children.

PROFESSOR JAMES BARR AMES, Massachusetts: As I read section 20, it does not hang together with sections 16 and 17. Sections 16 and 17 provide for a decree *nisi* if the court shall be of opinion that the plaintiff is entitled to a decree annulling the marriage, or to a decree for divorce from the bonds of matrimony. Section 20 alludes to decrees *nisi* either for annulment of the marriage, or for divorce whether from the bonds of matrimony or from bed and board. That is to say, there is no provision in section 16 for a decree *nisi* in the case of divorce from bed and board. Section 20 assumes that there is such a decree. The other point in this section is this: Section 17 provides for appeals from decrees *nisi*, but as I read section 17, there is no appeal from a final decree.

WALTER GEORGE SMITH, Pennsylvania: Not intended to be.

PROFESSOR JAMES BARR AMES, Massachusetts: Then, it seems to me, the last line and half of section 20 is superfluous, "and not from final decrees, unless objection to granting the same be made as provided by section 17 of this act." Section 17 does not provide for any appeal from final decrees, and therefore the words I have just quoted should be omitted.

VICE-CHANCELLOR EMERY, New Jersey: This is a matter of form, and it ought to be made exactly right. Professor Ames has suggested—

PROFESSOR JAMES BARR AMES, Massachusetts: If I may continue one moment, I would suggest a correction to this extent: Strike out the word "whether" in the third line, and strike out in the next line the words "or from bed and board," and then strike out that portion of the section beginning "unless objection," so that the section will read "Appeals or proceedings for review may be taken only from decrees *nisi*, either for annulment of the marriage or for divorce from the bonds of matrimony, and not from final decrees."

VICE-CHANCELLOR EMERY, New Jersey: The parties must have the right to appeal from a final decree. The general object of that section providing for an appeal from a decree *nisi* and not

a final decree was to provide that the appeal could be taken at once in those cases where decrees *nisi* are granted. Of course, in those cases where no decrees *nisi* were granted, the decree would be final at once, as a decree from bed and board becomes final at once. In all cases there must be an appeal upon the merits from the decree entered; it never would do to have it final. The section says, appeals from decrees *nisi* either for annulment or divorce from the bonds of matrimony, not from final decrees in such cases unless objection to granting the final decree is made as provided in section 17. I think the general object was this—I speak with some hesitation, because the practice is entirely new to us, and gentlemen practicing in States where decrees *n i* are allowed would know more about them—the purpose, as I understood it, was this: When a decree *nisi* was granted in the case where the marriage was absolutely dissolved, then objection might be made within the year, and if objection was made within the year and the court heard that objection, and, to a certain extent, re-tried or re-heard the case; and the purpose was that pending the re-hearing or re-trial in the court itself, there ought not to be an appeal pending; and it was therefore intended that there should not be an appeal from final decrees if the final decree was entered without an objection in the other court. There must of course be an appeal in all cases from the subordinate court; any other provision would be unconstitutional in any State, probably. I think, however, the Professor's objection to the phraseology is correct; the language is not clear, and it ought to be worked into a clear shape, and then perhaps there will be no disagreement on the principle.

TALCOTT H. RUSSELL, Connecticut: This act provides for appeals, but we and the various States, as I understand, exercise our discretion as to what proportion of the act we shall adopt. In Connecticut, the plaintiff cannot appeal from a decree refusing a divorce; it is in the discretion of the court granting the divorce, even although he proves a cause which comes within the statute. Of course, we think that is a very good feature, and we do not propose to give it up, and any recommendation that appeals be allowed generally would be revolutionary in our practice. I do not think it ought to be adopted. I do not think there would be any chance of it, at any rate. If we adopt this provision for appeals, it would only be extending the rights of those who apply for divorce, and would oblige the court to give them a divorce even although they might not think it best in the exercise of their discretion. Of course, it may be well enough for other States, but I do not think it would be adopted in our State.

ROBERT H. RICHARDS, Delaware: This provision would be impossible of operation in our State. We have a constitutional pro-

vision prohibiting appeals from interlocutory decrees or judgments. We have an appeal from final decrees only. So that this would be impossible of adoption. It is quite possible also that there are other States having similar provisions. Could not this general statute be made effective without adopting this particular section?

SENECA N. TAYLOR, Missouri: The rule which formerly obtained in Missouri was that appeals could only be taken from a final judgment; but it was a matter of legislative enactment, and not a constitutional provision. Finally, our Legislature passed an act that, on the trial of an issue or plea in abatement in attachment cases, if the decision were against the attachment the plaintiff might at once appeal from that and take the view of the Supreme Court on the subject. Now, it does not matter what the statute may say in any State on the question that appeal shall only be taken from final judgments and decrees, if this statute is passed making provision that where there is a decree *nisi* you may appeal from that, that would be constitutional, unless there is a constitutional inhibition against it. Generally, in our State appeals can only be taken from final judgments, yet this provision in regard to attachment, taking an appeal where the attachment is dissolved before you come to final issue, works charmingly; so would this divorce act. We have nothing in our State in regard to decrees *nisi* in divorce, but it would be one of the most flexible things in the world for any lawyer to apply.

(At this stage Governor Pennypacker retired, and Hon. Amasa M. Eaton, Vice-President, took the Chair).

The VICE-PRESIDENT: Is the Congress ready to vote on the amendment?

PROFESSOR JAMES BARR AMES, Massachusetts: I make no amendment, and I was not criticizing the substance of this act, but simply made a suggestion as to the form of section 20.

The VICE-PRESIDENT: There is no matter before us, unless an amendment is proposed, excepting the passage of the section as it stands.

PROFESSOR JAMES BARR AMES, Massachusetts: To bring the matter before the Congress, then, I move that the suggested changes which I presented be adopted, namely, that in the third line the word "whether" be omitted, and in the next line the words "or from bed and board" be omitted; and that all after the word "decrees" in the fifth line be omitted, so that the section will read as follows:

Appeals or proceedings for review may be taken only from decrees *nisi*, either for annulment of the marriage or for divorce from the bonds of matrimony, and not from final decrees.

SENECA N. TAYLOR, Missouri: Why not add "or from the decree from bed and board or legal separation," so that there may be an appeal in a case of that kind? The proposed amendment does not cover that.

PROFESSOR JAMES BARR AMES, Massachusetts: My whole criticism was of the incompatibility of this section. I am simply trying to bring about consistency between the sections.

CHARLES F. LIBBY, Maine: It seems to me that the objection is correct, and that the change needs to be made. I think the trouble grows out of the earlier draft of this act, out of which certain matters were stricken. One of the objections, however, that has been urged seems to me to grow out, perhaps, of a misunderstanding of the real effect of the decree *nisi*. We speak of a decree *nisi* as interlocutory; but that is not quite accurate. No decree that passes upon the whole merits of the case is an interlocutory decree. An interlocutory decree is to advance the cause in some of its various stages, but when you finally pass upon the merits of a case, you get a final decree upon the merits. If this is rightly understood, it does not seem to me it would fall under the inhibition of the constitution of Delaware. I merely suggest that. Is it not possible that we are misleading ourselves by the use of the term decree *nisi* and final decree? Ought it not to be decree *nisi* and decree absolute? The decree *nisi* is a final decree with simply a postponement of operation until a certain time—for what purpose? To give the parties who may be affected by it, who have not been before the court, an opportunity to appear and object, and if fraud has been practiced upon the court, an opportunity to show that there has been fraud, because this affects the status of individuals, lasting in its character, and there is every reason that great care should be taken against giving immediate effect even to a decree on the merits. I think that the changes that have been suggested are right, and they should be adopted; but I think a re-drafting possibly of this section would better express the views of the Congress. It seems to me that instead of using the words "final decree" it should be "not from the decree when absolute," then you have expressed your meaning. The appeal is to be from the decree *nisi*. There is good reason why the appeal should not be from the decree absolute, because, in entering the decree *nisi*, the court has undertaken to pass upon the merits of the case, and to express its judgment that a divorce should be granted; and it is only in case where you are granting a divorce, not where one has been refused, that an appeal lies. It seems to me that if that language should be changed so as to read "and not from the decree when absolute," or something of that kind, you would have covered it. Then you have not undertaken to express the opinion that an appeal should not be taken from a final decree of

divorce from bed and board, which I do not suppose any one intended. Did the Congress intend that there should be no appeal from a final decree of divorce from bed and board?

SENECA N. TAYLOR, Missouri: No, the Congress intended that there should be. I think we can obviate all this difficulty by the amendment which Professor Ames suggests with this further amendment. See if you will accept this: "Appeals or proceedings for review may be taken only from decrees *nisi* either for annulment of marriage or for divorce." Now, you do not say divorce from the bonds of matrimony, or divorce from bed and board. We have already defined in this act that divorces are of two kinds; one is that that severs the marital tie, and the other is a separation from bed and board. Now, if we speak of divorce, and do not limit it by using the words "from the bonds of matrimony," we speak properly; that applies then to an appeal from a decree of divorce, whether absolute or from bed and board merely. Am I not right?

PROFESSOR JAMES BARR AMES, Massachusetts: I think not. Because the second line is that appeals may be taken only from decrees *nisi;* and the only provision for decrees *nisi;* when you read section 16, is decrees annulling the marriage, or decrees for divorce from the bonds of matrimony. There is no provision for decrees *nisi* in the case of divorce from bed and board.

VICE-CHANCELLOR EMERY, New Jersey: It strikes me, from the course of the discussion, that the practical difficulty which arises here is by reason of the application in each State of their constitutional or statutory provisions relating to appeals from decrees. Some States, either by constitution or by statute, provide that there shall be no appeal or writ of error except from a final decree or judgment. Now, it has occurred to me that probably the introduction of this question of practice relating to appeals might involve a difficulty if we attempted to settle it here by uniform statute; and it also occurs to me that possibly there is not any occasion at all for any provision in this act in relation to appeals from decrees either *nisi* or final, because each State regulates its appeals or writs of error, not by the nature of the question involved, but by the fact of the finality of the judgment, or what the judgment includes. On turning to the statute of Massachusetts—I read from their section 18—"Decrees of divorce shall in the first instance be decrees *nisi*, and shall become absolute after the expiration of six months from the entry thereof, unless the court before the expiration of said period, for sufficient cause, upon application of any party interested, otherwise orders."

Now, there is not in the Massachusetts divorce statutes any spe-

cial provision as to whether an appeal from a decree in a case of matrimony shall be entered from the decree *nisi*, or from the decree when it becomes absolute. It is quite possible that the courts of Massachusetts, in the application of their constitution and statutes, have said which decree you shall appeal from, under what terms and in what time. We have defined, with some particularity, in section 17 of the statute just adopted, what shall be done. I take it, from the reading of the Massachusetts statute, there is but one decree entered, the decree *nisi* which standing for six months becomes absolute, and that nothing further is done. The form of procedure adopted by section 17 you will see is somewhat different. It says:

"Section 17. A decree *nisi* shall become absolute after the expiration of one year from the entry thereof, unless appealed from or proceedings for review are pending, or the court before the expiration of said period for sufficient cause, upon its own motion, or upon the application of any party, whether interested or not, otherwise orders; and at the expiration of one year such final and absolute decree shall then be entered upon application to the court by the plaintiff, unless prior to that time cause be shown to the contrary."

This seems to contemplate, at the end of the year, the entry of what is called a final decree, an absolute decree. Now, the laws of each State, as they stand to-day, would determine the appealability from any judgment or decree, I take it, so that it might perhaps be advisable from that point of view, in working out the practice, to omit in our act any provision as to appeals, leaving that to each State. This decree *nisi* is so new to me I do not know how it is worked out practically, and the matter was not mooted before the Committee; but is it entirely clear that if we said nothing about appeals, these decrees would be subject to the general provisions of the laws of the States in reference to appeals? Appeals might or might not be allowed then.

WALTER GEORGE SMITH, Pennsylvania: I have just written and submitted to Professor Ames a simple statement which may not be technically correct, but which I believe is the wish of the Congress and the purpose of the Committee, and I will read it.

"Appeals or proceedings for review may be taken only from decrees *nisi* either for annulment of the marriage or for divorce from the bonds of matrimony, and not from final decrees. Appeals may also be taken from decrees for divorce from bed and board."

Our friend, the Vice-Chancellor, proposes, and I think, from what I have overheard from some of my colleagues on the Committee—we have listened with great satisfaction to what he said—to strike out the whole subject of appeals, leaving it to each State to do what seems proper. My only objection to that, and it is not very stren-

uous, is this—while it is true that it is an anomaly to speak of an appeal from a decree that is not a final decree, the gentleman from Missouri has pointed out that in his State at least there is such a practice, and there is such a practice in certain kinds of decrees in the State of Pennsylvania, and I daresay in others. Our friend from Delaware explained that he is met by a constitutional inhibition, and that the decree must be a final decree. This thought of decrees *nisi* and final decrees is taken from the statute of California, and of one or two other States; the purpose being, as was explained in the Congress at Washington, to allow an opportunity for the correction of mistakes, discovery of fraud, and, not the least of all, the opportunity for reconciliation. We do not care, as far as the Committee is concerned, at all when it comes to matters of procedure, what technical language is used in any particular State, the thought of this Congress being that there should be, first, a decree upon the merits of the case, and that should be the only thing appealed from, and the limit of time for appeal should be fixed, and that the proper decree should be entered. Now, it is eminently proper that there should be a right of appeal from decrees of divorce from bed and board. The delegate from Massachusetts has pointed out to us that there is an awkwardness and discrepancy in the language here which makes it inconsistent with section 17. If it is the best thought of the Congress that our wish will be understood by striking out this section providing for appeals, I am willing to have it go; but I am apprehensive that if we do not put in that provision as to what I have already stated in regard to decrees *nisi*, it may be overlooked in some States; whereas, if we do adopt it, it is distinctly understood that there is no sacredness in the words. Everyone of you will go back to your State, and will take these sections in regard to procedure, and so far as procedure is concerned you will have to adapt it to the jurisprudence of your State on this subject. With that as our feeling, had we not better leave that section stand as I have read it, or perhaps it might be drawn a little more artificially, or, as suggested by the delegate from Massachusetts—appeals or proceedings for review may be taken only from decrees *nisi*, either for annulment of the marriage or for divorce, and not from final decrees—then this subject is disposed of. Then, in order that there may be no ambiguity, we can add, "Appeals may also be taken from decrees for divorce from bed and board."

TALCOTT H. RUSSELL, Connecticut: I move to strike out this whole article on the subject of appeals, including sections 20 and 21. We have spent all the afternoon trying to lick this thing into

shape, discussing details, and it is admitted that it is not yet in such form that it can be a matter for uniform adoption.

PRESIDENT WARREN, South Dakota: I second the motion.

JOHN C. RICHBERG, Illinois: I think we are all indebted to Professor Ames for calling attention to the incongruity of this Article X with reference to Article IX, sections 16 and 17. There is no question about it, there is an incongruity, and it is obscure and indefinite. There can be no fault found with sections 16 and 17 as adopted. It is simply with reference to this article. Now, every purpose will be accomplished that the delegate from Massachusetts contends for, or the Chairman of the Committee, if we adopt the motion to strike out the entire article relating to appeals. It would take some time to put this thing in proper shape. We have now before us two amendments, neither of which is satisfactory, and no one can say how either of the amendments would stand with sections 16 and 17 as adopted. There certainly is no use in retaining this article. When it comes to the question as to what is a decree *nisi* in one case and what it is in another, there is a difference, and many States have no such decrees. In all deference to the delegate from Missouri, I beg to call his attention to the fact that the decree he is referring to in Missouri is not a decree *nisi*. When you dissolve an attachment there is a judgment that the attachment shall not stand, and of course that is a final decree, and is appealable. In an action of attachment you have two forms of decrees, one is as to whether the attachment shall lie, and the other is as to whether you shall recover your money under the attachment; you have practically two forms of action in one. We have precisely the same law in Illinois. Now, in the matter before us, where you have a decree *nisi* which is not to become final until after the year, it would seem that the appeal from the decree *nisi* would lie at any time within the year; it is quite immaterial whether it would be within a day or within ten days or twenty days. Every State has a statute on the subject of appeals, an appeal must be taken within a limited time prescribed by law. It would seem to me therefore that the motion of the gentleman from Connecticut is a very proper one, to strike out the entire chapter on appeals.

BENJAMIN H. NIELDS, Delaware: If the section as read or as amended is recommended, it would be an absolute nullity in Delaware, and it would be an absolute nullity in good many of the States, because the right to an appeal from a final judgment is a constitutional right secured to every individual. Why, then, pass any resolution with reference to appeals?

The question being upon the motion to strike out the chapter on appeals, including sections 20 and 21, it was carried.

WALTER GEORGE SMITH, Pennsylvania: I now move the adoption of section 22, which will now become section 20.

Duly seconded.

The Secretary then read the section, as follows:

CHAPTER III—GENERAL PROVISIONS.

Article X.—Children.

Section 20. Legitimacy of.

a. In an action brought by the wife, the legitimacy of any child born or begotten before the commencement of the action shall not be affected.

b. In an action brought by the husband, the legitimacy of any child born or begotten before the commission of the offense charged shall not be affected; but the legitimacy of any other child of the wife may be determined as one of the issues of the action. All children begotten before the commencement of the action shall be presumed to be legitimate.

The Secretary then called the roll of the States, and announced that 18 States voted aye, and none no; whereupon the Chair declared section 20 adopted.

WALTER GEORGE SMITH, Pennsylvania: I now move the adoption of section 23, now 21.

Duly seconded.

The Secretary then read section 21, as follows:

Article XI.—Foreign Decrees.

Section 21. Effect of.

Full faith and credit shall be given in all the courts of this State to a decree of annulment of marriage or divorce by a court of competent jurisdiction in another State, territory or possession of the United States when the jurisdiction of such court was obtained in the manner and in substantial conformity with the conditions prescribed in sections 7, 8, 9 and 10 of this act. Nothing herein contained shall be construed to limit the power of any court to give such effect to a decree of annulment or divorce by a court of a foreign country as may be justified by the rules of international comity: Provided, That if any inhabitant of this State shall go into another State, territory or country in order to obtain a decree of divorce for a cause which occurred while the parties resided in this State, or for a cause which is not ground for divorce under the laws of this State, a decree so obtained shall be of no force or effect in this State.

ADOLPH SLOMAN, Michigan: I would like to inquire from the Chairman of the Committee as to whether or not the question of full faith and credit is not regulated and controlled by the Federal Constitution, whether if a State undertook to pass a law giving faith and credit, for instance, in a suit brought by publication, no personal service being had, as they did in the recent case decided by the United States Supreme Court, in which they denied the full faith and credit clause to a divorce granted where proceedings were by publication—in the face of that fact, could a State undertake by this act to give full faith and credit to divorce by publication?

WALTER GEORGE SMITH, Pennsylvania: Undoubtedly. As I understand the law, the Constitution of the United States has provided that full faith and credit be given to certain decrees and judgments; and that provision of the Constitution has recently been interpreted by the Supreme Court of the United States in the case of Haddock vs. Haddock; and there is a long line of decisions on that subject. But there is nothing to prevent a State saying that within its borders full faith and credit shall be given to any decrees whatsoever unless they be of some character contrary to the Constitution of that State, or contrary to the Constitution of the United States. The provision of the Constitution of the United States lays the command on the States to give full faith and credit, but the States may add to that command if they see proper to do so. The object of this section obviously is to correct the anomaly that is found to exist, notwithstanding the exercise of the great wisdom of the majority of the courts and the Supreme Court of the United States. Before the decision in Haddock and Haddock was rendered, the question was before the Committee. The Congress had held its session in Washington prior to the rendition of that judgment. But we found that this question of the effect of foreign decrees was one of the vital questions relating to the whole subject of divorce. Here is the state of things: one State recognizes, on the ground of comity, apparently regular judgments or decrees rendered in another State. Another State will recognize them under certain conditions, after they have been found to comply with those conditions. Another State refuses to be bound by them at all. Now, the great object that we have in view here is, if possible, to obtain the adoption of a just, uniform law of divorce that will commend itself to the communities of all of the different States. We have to leave to the different States the subject of jurisdiction with regard to causes. The central thought that we have is that each community must decide for itself what are causes in that community; but we are earnestly hoping that we may make such a provision in our statute as will remove the intolerable condition of affairs where a

man is married in one State, and not married in another, where children are legitimate in one State, and not legitimate in another. We undertook, as members of the Congress will see by reference to the section that has been stricken out entirely, on page 10 of the statute, to provide a uniform method of giving jurisdiction to the courts, and we decided it was dangerous to do that. We say that it is fair and just that if in substantial conformity with the provisions of this act, the courts of any one of the States of the Union gets jurisdiction over the parties, that then that judgment or decree entered by that court ought to be good throughout the United States. That is the purpose of the section now before us.

SENECA N. TAYLOR, Missouri: There is not a section before the Congress that was wrought over as much as this particular section. As now drafted, it was prepared by Professor Huffcut, Dean of the Law School of Cornell University; and its importance is far reaching. If such a law as this had existed in New York when the Haddock case came there, it never would have found its way to the Supreme Court, because if the service had been had in conformity with an act which was uniform, then New York would have felt compelled to give comity to that decree, and if New York had done that, there would have been no appeal from that decision to the Supreme Court of the United States. Our view was that a statute like this, if it became uniform, would cure the far reaching evils pointed out in the Haddock case; and we presume it will, after mature deliberation.

The Secretary then called the roll of the States upon the adoption of section 23, now section 21, and announced 19 States voting aye, and no State no; whereupon the Chair declared the section adopted.

PERCY WERNER, Missouri: I rise to move an amendment by the adoption of a section to the general provisions which have just been passed, to be entitled section 22, and to be as follows:

Wherever a decree in favor of either party involves the finding of the other guilty of a crime or misdemeanor under the laws of this State it shall be the duty of the trial judge to report his findings to the prosecuting attorney of the county in which the case was tried, or the offense committed.

Duly seconded.

WALTER GEORGE SMITH, Pennsylvania: I will ask the gentleman as a personal favor to withhold that motion until we shall have acted on section 24, because it is new matter, and this withholding shall be without prejudice.

Motion withdrawn.

WALTER GEORGE SMITH, Pennsylvania: I now move the adoption of sections 24 and 25; the new numbers being sections 22 and 23.

Duly seconded.

The Secretary then read the sections, as follows:

Article XII.—Repeals.

Section 22. Repealing Clause.

The following acts of Assembly and parts of acts, viz: .....

.....

and all other acts and parts of acts of Assembly of this State, general, special or local, appertaining to the subject matter covered by this act, be and the same are hereby repealed: Provided, That nothing in this act contained shall effect or apply to any actions for annulment of marriage, or for divorce, now pending.

Section 23. When Act Shall Take Effect.

This act shall take effect on the .....day of ..... A. D. .....

PROFESSOR JAMES BARR AMES, Massachusetts: The language of this section is rather vague in this clause: "appertaining to the subject matter covered by this act." Usually, the provision is that all acts inconsistent with a particular act are to be repealed. If that is the meaning here, I think it would be better to say so.

WALTER GEORGE SMITH, Pennsylvania: I accept that amendment.

The VICE-PRESIDENT: The words "appertaining to the subject matter covered by" will be stricken out, and the words "inconsistent with" inserted.

There being no objection the Secretary proceeded to call the roll of the States, and reported 19 States voting aye, and no State no; whereupon the Chair declared the section adopted.

WALTER GEORGE SMITH, Pennsylvania: Before making the necessary general motion, I give way to the delegate from Missouri, who has a special motion.

VICE-CHANCELLOR EMERY, New Jersey: I rise to a point of order; I think the motion ought to be referred to the Committee on Resolutions.

PERCY WERNER, Missouri: The situation is this, that almost in the form in which I now offer the motion I offered it to the Committee on Resolutions, and they courteously offered me a hearing, and then rejected it, for reasons which are not entirely satisfactory

to myself, and for reasons which I deemed so very important, I have felt it incumbent upon myself to present the question on the floor of the Congress.

The VICE-PRESIDENT: The Chair would like to ask whether that report comes from the Committee?

WALTER GEORGE SMITH, Pennsylvania: The Committee made no report upon this subject, but let me make the report now. On behalf of the Committee on Resolutions, I desire to make this "interlocutory" report, that at a meeting of the Committee held yesterday evening Mr. Werner, of St. Louis, presented to us for our consideration as an additional section to this act the words that he has just read, and he presented his views at some length. After he had done so, the Committee considered them, and, by a unanimous vote, rejected them. I now report to that effect to this body.

The VICE-PRESIDENT: For the enlightenment of the Congress, will the Chairman state the reasons.

WALTER GEORGE SMITH, Pennsylvania: Unless the reasons are specially called for, I think it is better not to state them.

CHARLES F. LIBBY, Maine: I now move that the report of the Committee on Resolutions be accepted.
Motion seconded.

PERCY WERNER, Missouri: Will this dispose of my motion to adopt the additional section?

The VICE-PRESIDENT: The Chair is obliged to rule that the question before the House at the present juncture is the motion of the gentleman from Maine on the adoption of the report just made by the Chairman of the Committee on Resolutions.

PERCY WERNER, Missouri: I desire to be entirely courteous and of course regular, and the opportunity thus furnished me answers all my purpose. I feel like congratulating the Assemblage on the very happy termination of its labors. I feel we have gone far towards establishing uniformity in the matters of divorce legislation. One of the strong reasons for calling this Congress was that we might diminish the divorce evil. I for one believe that the divorce evil depends more upon the administration than the form of legislation, and that the administration of our laws depends upon the healthy public sentiment which is behind our laws. Now, I desire to call to the attention of the Congress that divorce grows almost exclusively out of acts of the delinquent party to the marriage contract, which are either crimes or misdemeanors. In order to reduce

the divorce evil, therefore, if those crimes and misdemeanors were followed by merited and legitimate prosecution, more would be done towards stamping out the divorce evil than by any amount of legislation. The section should be adopted for three reasons; first, if a party plaintiff entering the court with a petition for divorce realized that it might be but the beginning of an ultimate criminal prosecution, the matter of bringing a divorce proceeding would be given very much more weighty consideration than now, where parties imagining themselves aggrieved or wronged run too hastily to the divorce courts. In the second place, it is well known to all active practitioners that, despite legislative provisions, there is almost always more or less collusion, because where a plaintiff actively desires a divorce the defendant, in almost all instances, concedes it actively or passively; but if the defendant realizes that a decree for a divorce based upon a given charge would involve him in the conviction of a crime or misdemeanor, it at once cuts out all chances of collusion, because you cannot imagine that two parties will collude together to give one of them a jail sentence. Finally, the character of crimes and misdemeanors that we have to deal with here is the most contemptible and despicable of which mankind is capable, because they are not only a violation of our criminal laws, but violations that are committed in the secrecy and privacy of homes by cowards, and a violation against vows registered to honor and protect the party against whom the offense is committed. You will all bear me out that in the history of divorce cases in this country it has been precisely that class of contemptible crimes and misdemeanors in which the guilty parties have gone absolutely scot-free. Now, I admit that at present all judges who try these cases have the discretion of referring these matters to their prosecuting attorneys; but I ask you when is it ever done? Where have you ever heard of divorce proceedings followed up with the proper criminal proceeding? And the object of this is, instead of leaving it discretionary with the trial judge, to make it obligatory, namely, to impose it upon him as a duty; and I believe that if the various State Legislatures enacted this, and if the attention of the public is once called to this, hereafter this class of criminals will not go, as they are now permitted to go, unwhipped of justice.

CHARLES F. LIBBY, Maine: This matter has been twice before the Committee on Resolutions. It has been very carefully considered, and the unanimous judgment of the gentlemen constituting that Committee was that this would not be a wise feature of a uniform statute on divorce. The gentleman who offers it lays great stress on the fact that felons would not go unwhipped of justice if this addition were made. Having been a prosecuting officer my-

self, having had some large experience in early life with this class, as well as other criminaal offenses, I cannot share the gentleman's views as to the effect it would have either upon the administration of divorce courts or the results to be obtained in criminal courts. In effect he asks that every woman who seeks to be relieved from permanent union with an unworthy partner shall be obliged to stamp the father of her children as a felon in the criminal courts of the State, wherever she may apply.

PERCY WERNER, Missouri: Only for the reason that I believe the interests of society transcend the interests of the unfortunate applicant.

JOHN C. RICHBERG, Illinois: And prevents the children from having support and the wife from being supported.

CHARLES F. LIBBY, Maine: In effect, this undertakes not only to do away with all judicial discretion, but to make a rule absolute and compulsory that under no conditions shall the wife have relief unless punishment in the criminal courts shall follow against the offending party to the matrimonial alliance. Now I do not believe from any point of view that is wise. I do not believe that it would be wise for the Legislature to undertake to say to every prosecuting officer, "You shall prosecute publicly every offense against good morals of this character which may be brought to your attention." I believe more harm is done to the public by furnishing through the newspapers the disgusting details of many of these sexual offenses than in almost any other way. I believe that there is a prurient curiosity in the community to get at such things, which instead of being encouraged ought to be discouraged. And I believe that the effect of this act would not be to purify public morals, but to drive people to find some other cause of divorce than that which renders it necessary to brand the father as a criminal before the law. This does not attempt any excuse for these offenses; it is not put upon that ground; but it is that we must look upon legislation as a practical matter, dealing in the best way possible with the interest of the public, as well as the private interests that are involved in these divorce proceedings; and, looking at it from every point of view, I cannot see how anybody who has experience in these matters could sustain such a provision of the law.

FRANCIS TRACY TOBIN, New Mexico: I desire to ask information; I understand that the State of New York has no statute against adultry, that is, no statute making adultry a criminal offense.

CHARLES THADDEUS TERRY, New York: That is so.

The VICE-PRESIDENT: The question before the Congress is on the adoption of the report of the Committee. Shall the report of the Committee be adopted?

The question being upon the adoption of the report of the Committee, it was carried.

WALTER GEORGE SMITH, Pennsylvania: I now move the adoption of the proposed uniform statute relating to the annulment of marriage and divorce, which has been considered section by section and approved section by section.

Duly seconded.

PERCY WERNER, Missouri: I move the amendment of section 3, paragraph d, by changing the word "and" in the third line thereof to "or."

WALTER GEORGE SMITH, Pennsylvania: I accept the amendment.

The VICE-PRESIDENT: The Chair understands the motion to be to make paragraph d in section 3 correspond with paragraph d in section 4.

WALTER GEORGE SMITH, Pennsylvania: I ask unanimous consent that that be permitted.

CHARLES THADDEUS TERRY, New York: I do not like to have this question brought up again, and I refuse to give unanimous consent.

The VICE-PRESIDENT: The question before the House is, Shall the motion of the gentleman from Missouri prevail?

The question being as stated by the Chair, it was carried.

REV. DR. HENRY COLLIN MINTON, New Jersey: I should like to suggest, as a mere matter of form, that in paragraph d, section 3 and section 4, the word "to" be inserted between "or" and "render."

The VICE-PRESIDENT: If there is no objection, the change may be made, and as I hear no objection, the roll will now be called on the question on the adoption of the statute as a whole.

MRS. RACHEL SIEGEL, Utah: May I just say a word? I should like to make a motion to amend section 19. This Congress is meeting for the purpose of trying to abolish, to a certain extent, the divorce evil. I think we can only do that and help the cause by preventing remarriage, so that I would like to ask the advice of the lawyers here whether I am doing it in a proper way. I want to offer a sec-

tion to this effect: The court shall have the power to restrain the remarriage of either party for a limited period after the granting of the divorce.

WALTER GEORGE SMITH, Pennsylvania: If I understand the delegate from Utah, she means that the courts should have power to lay an inhibition upon the marriage or remarriage of the divorced parties?

MRS. RACHEL SIEGEL, Utah: Not that, only for a limited time, a period of two years.

WALTER GEORGE SMITH, Pennsylvania: That is covered, at least I think it is, by the act. The evil is sought to be covered by the provision for a decree *nisi*, and the interval elapsing between the decree upon the merits, which we call here for convenience decree *nisi*, and the final decree. The proposed statute fixes that at a period of one year, and, in the judgment of the Committee, that was considered long enough to prevent the scandal of hasty remarriage, and to provide for a possible reconciliation.

The VICE-PRESIDENT: During that period of course a remarriage cannot take place.

MRS. RACHEL SIEGEL, Utah: I would like it a longer period, if possible.

C. LA RUE MUNSON, Pennsylvania: Before roll call, I desire to make a suggestion. I appreciate the views, for example, of the delegate from New York that his State recognizes but one cause for divorce, and therefore I assume, as has been his vote heretofore, that he will not join us in a vote to adopt the statute as a whole. Let me suggest this thought: Here is a statute, which, outside of the question of causes, in other material points has practically the unanimous consent of the States. If, therefore, when we bring this statute to our various Legislatures, we may say that it had, as a whole, the consent of the delegates from the east, we go a long way towards its adoption in the various States. I desire to move that the note which is appended on top of page 5 be printed with the act. This note, as you will observe, says that "Each State is at liberty to reduce or increase the same as its citizens may deem advisable." With that note as a part of the statute, it would seem to me, with all deference to our friend from New York, that he might conscientiously join us in a vote adopting the statute as a whole, and thereby expediting its adoption by the States of the Union.

Duly seconded.

The VICE-PRESIDENT: The motion before the House is to adopt the following note to be printed with the statute:

"Note—The foregoing causes for divorce *a vinculo*, are, *in extenso*, the causes suggested by Par. 'B' of Resolution 6, adopted by the Congress on Uniform Divorce Laws, February 19-22, 1906, as being in fact recognized by a large number of the states of the Union, but each state is at liberty to reduce or increase the same as its citizens may deem advisable."

VICE-CHANCELLOR EMERY, New Jersey: With reference to the question as to the status of the different States on this final vote, my understanding of the situtaion is not exactly the same as that of the Chairman of the Pennsylvania delegation. For instance, in reference to the particular section which relates to the matter of hearings; that was a matter in which considerations relating specially to the State of New Jersey seemed to make it altogether inapplicable, and when the question came up on that particular section New Jersey's vote was cast against it. That shows the views of the State of New Jersey as to that particular matter. But I recognize that as to most of the States, perhaps all except our own State with its peculiar practice, it is a proper provision. Now, I do not think we would, as members of the State of New Jersey, hesitate to give our vote for the whole act as now passed, and I do not see why it should be considered as necessary that any delegate from the State of New York, or any other State, having cast the vote that is recorded for or against any particular propostion when that was the subject of consideration, should say they cannot vote for the act as a whole, while this particular section relating to the jurisdiction was the work almost altogether or principally of the delegate from the State of New York. The mere fact that members from one State voted against the adoption of a particular amendment does not at all stand in the way of their voting for the whole act as the best uniform act that can be suggested to present even to their own State. In presenting this by way of draft, or address or statement to the different Legislatures, something of that kind might well appear; but in our formal act I think it ought to be passed clean and clear just as it is.

TALCOTT H. RUSSELL, Connecticut: I want to rise to a point of conscience. I have voted no on a great many of these provisions, some of the minor provisions, which I do not think on the whole would be wise to recommend the adoption of to the State of Connecticut, but there are some minor portions of this act I could recommend. Now, that does not prevent my voting for the adoption of the act as a whole as a good uniform act in general; and I do not understand that that vote pledges me to advocate in Connecticut every provision of this act.

C. LA RUE MUNSON, Pennsylvania: I withdraw my motion.

F. H. BUSBEE, North Carolina: I give notice that after the passage of the act I will move that the Committee on Resolutions be requested to prepare a short statement of the causes and of the results of the act.

FRANCIS TRACY TOBIN, New Mexico: I would state, in voting on this question, that the Territory of New Mexico is in favor of the law just as it has been passed by this Congress, and that the Governor of that State has written me that he will press it before the next session of the Legislature, and will do everything in his power to have this law which we are now about to pass passed at the next session of the Legislature of the Territory of New Mexico. I submitted to him a copy of this act, and he approved it, and has so written me.

The VICE-PRESIDENT: The question now is upon the passage of the statute as a whole. The Secretary will call the roll of the States.

The Secretary proceeded to call the roll of the States, and when New York was reached Mr. Terry said:

"May I be indulged for a word. I appreciate very much the efforts of my friend from Pennsylvania to aid me in the discharge of a very embarrassing duty. No one appreciates probably more than I do the ability, the untiring energy, and the wisdom displayed by his Excellency, the Governor of this Commonwealth, and the Commissioners from Pennsylvania and the Committee on Resolutions. Perhaps I ought to say this word of explanation: In voting upon the separate paragraphs I have considered that one was voting, not only with reference to the substance of the provision, but voting as determined to use his best efforts to see that the code passed by this Congress should have the sanction of his Legislature. That I have deemed to be the substance of what was conveyed by a vote. Perhaps I have been mistaken in that, but I say that in explanation of some of the views which I have been obliged to take with reference to some of these provisions. Now, Mr. Chairman, on this question New York is not going to vote; and she is not going to vote for this reason: My colleague of the New York State delegation was a member of the Committee on Resolutions, which has presented to this Congress the act which has now been passed section by section, and I take to myself the privilege which was accorded the Bishop the other day of recognizing here the views of my colleague, and with the indulgence of the Congress I shall take the attitude of saying that New York, being divided in its vote, cannot vote upon this question."

The VICE-PRESIDENT: The State of New York does not vote; proceed.

PRESIDENT WARREN, South Dakota: I may be allowed to say that I vote aye heartily, but with the reservation that if it does not seem practical to urge all of the provisions, we shall be privileged in South Dakota to urge what is possible, on the principle that half a loaf is better than no bread.

The roll call being completed, the Secretary announced 18 States voting aye (New York not voting), and no State no; whereupon the Chair declared the statute as a whole adopted unanimously.

TALCOTT H. RUSSELL, Connecticut: I offer the following resolutions:

Resolved, That the Committee on Resolutions be continued with instructions to prepare a statement to accompany the act, explanatory of its provisions and the reasons for its adoption, and to take such measures as may seem to the Committee expedient to promote the adoption of the act by the several States, Territories and District of Columbia.

Duly seconded.

REV. A. J. D. HAUPT, Minnesota: I would like to ask if it is necessary to make a provision for sending copies of this to the several delegates.

JOHN C. RICHBERG, Illinois: That will be done.

The question being upon the resolution offered by the gentleman from Connecticut, it was unanimously carried.

WALTER GEORGE SMITH, Pennsylvania: I yielded to my friend from Connecticut, but really, as Chairman of the Committee on Resolutions, I had the precedence, because there are three other acts recommended by the Committee that require attention, and one act with a negative recommendation. With the permission of the Chair and the Congress, I will see if we cannot dispose of the negative recommendation before we take up the other acts which may perhaps provoke debate. On page 223 of the proceedings in Washington, Mr. Eaton, of Rhode Island, requested the privilege to distribute copies of a uniform law relative to family desertion, and Mr. Hart, of Louisiana, moved that the bill be referred to the Committee on Resolutions. The Committee on Resolutions has considered this matter, and instructs me to report negatively upon that act, and I would ask action upon that report.

JOHN C. RICHBERG, Illinois: I move that the report of the Committee be adopted.

Duly seconded, and agreed to.

WALTER GEORGE SMITH, Pennsylvania: The Committee on Resolutions were instructed to prepare a uniform bill providing for

the return of statistics relating to divorce proceedings, and it has reported a bill which is in accordance with the requirements of the United States Government in collecting its statistics under a recent law passed at the request of the President of the United States. Our bill is only suggestive, of course. If any State feels it should add to or change the form, there is nothing imperative about this. The action of the Congress would simply be an approval of the matter and calling it to the attention of the various States.

F. H. BUSBEE, North Carolina: May I ask the Chairman a single question? Will it not be possible to get statistics as to the color of the parties?

WALTER GEORGE SMITH, Pennsylvania: I will add that, at the proper place the word "color" will be inserted.

The proposed act is as follows:

AN ACT

Providing for return of statistics relating to divorce proceedings.

Section 1. Be it enacted, &c., That the clerk of every court having jurisdiction of divorce proceedings shall, on or before the first day of February in each year, make return to the Secretary of the State Board of Health (or other designated State official), upon suitable blank forms, to be provided by the State, of each suit for annulment of marriage or divorce brought or acted upon in said court during the preceding calendar year, specifying in regard to each case:

1. The record number.
2. Full names of plaintiff and defendant.
3. Age of each.
4. Occupation of each.
5. Color.
6. Date of marriage.
7. Place of marriage.
8. Date of separation.
9. Date of filing the libel (or bill).
10. The alleged cause or causes for annulment or divorce.
11. Whether intemperance was a direct or indirect cause.
12. Kind of relief prayed for.
13. Residence of each at time of suit brought.
14. Manner of service of summons (or subpoena.)
15. Whether the suit was contested or not.
16. Date of decree.
17. Nature of decree.
18. Final disposition of case.

19. Whether alimony was asked—and granted.
20. Number of children by the marriage.
21. Number of children affected by the decree.
22. If cross bill was filed, a similar return relating thereto.

For such returns each clerk shall receive the following fees (each State to fix its own fees), and upon neglect or refusal to make such returns, such clerk shall, for each such neglect or refusal, forfeit and pay the sum of $100, for the use of the proper county.

And the Secretary of the State Board of Health (or other designated State official) shall annually prepare, from said returns, abstracts and tabular statements of the facts relative to divorce in each county, and embody them, with the necessary analysis, in his annual report to the State.

ADOLPH SLOMAN, Michigan: I would like to inquire whether No. 18 "Final disposition of the case" gives sufficient information?

WALTER GEORGE SMITH, Pennsylvania: "Final disposition of the case," the Chairman assumes, would include an abstract of the final decree entered in the case, which would include the care and custody of the children, of course.

REV. DR. SAMUEL W. DIKE, Massachusetts: The statement ought to be made that it is not quite correct to say that the items 21 and 22 are the recommendation of the United States Government. The Census Office, which is now engaged in collecting the statistics, requested the Hon. Carroll D. Wright, who had to do with the collection of statistics in 1889, to prepare a list of topics, and Mr. Wright consulted me, and we went over it together, and he named a great many of these, but named them with the idea that we could not get the information except in very few counties in the country on certain points; for instance, the occupation. There is no source of information on occupation, because the libel in divorce does not require it. The agents in Boston told me that they were getting information only on a certain number of points, about ten points covered in the investigation of 1889, and these have been added with the hope of getting something more.

The VICE-PRESIDENT: The Chair would inquire whether all those ten points are in this act?

REV. DR. SAMUEL W. DIKE, Massachusetts: Yes; the ten points are in this act.

The VICE-PRESIDENT: If so, the rest may be deemed as surplusage.

REV. DR. SAMUEL W. DIKE, Massachusetts: But I think it would be a great mistake to ask the States to include all these in the act. Some twenty years ago, when the present basis of statistics in Massachusetts was made the subject of law we put into the bill as then prepared, a number of data, and the clerks of the courts came down to the Legislature and said, "You are laying upon us a great deal of work, and we have no means of ascertaining some of these facts," so we cut down the points to those given in the bill as it stands to-day. The papers in the case give the clerks of the court every possible data from which to make up their returns. I do not think you will get a great deal of attention to this in any Legislature unless you put in the section somewhere a requirement that such and such a fact shall be stated in the libel as the condition sine qua non, and in that case you will have the data. Then it will be possible to get the returns. We make a great mistake in matters of statistics when we ask for too many things, and we do not need to ask for all these 22 subjects that are mentioned in this bill.

The VICE-PRESIDENT: The Chair would ask if the gentleman has any motion to make.

REV. DR. SAMUEL W. DIKE, Massachusetts: I have no motion to make at this time, but I merely wish to suggest to the Congress whether it will be wise to require information on all these points.

WALTER GEORGE SMITH, Pennsylvania: The gentleman who has just taken his seat is such a well recognized authority on this subject, and he has taken so little of the time of this Congress that we must not show impatience even if we are hastening to a close. I will just say to him for his satisfaction that our hearts are with him, but that the subject of what the libel shall contain must be decided by each State in the code of procedure that it will adopt. Perhaps he did not understand me accurately, or perhaps this statement I have in my hand is not just what I thought it was. It says, "Department of Commerce and Labor Bureau of the Census," and under the heading Divorce fall 18 questions that are required to be answered. Now this act is merely suggestive, and when it gets before the Committee to which it will be committed by the various Legislatures, probably the judiciary committee of each house, they will take it as an ancillary act to the proposed statute that we have just recommended, and will put it in shape in accordance with the requirements of the State. The main thing now for us is to make a suggestive act on the subject of statistics, and I hope that explanation will meet all that my friend desires.

The Secretary then proceeded to call the roll of the States, and reported 17 States voting aye, and no State voting no; whereupon the Chair declared the act adopted.

WALTER GEORGE SMITH, Pennsylvania: I now move the adoption of the act providing for the return of marriage statistics, and all that I have said in explanation to the delegate from Massachusetts applies also to this act. Of course this act is to be moulded so as to meet the condition of the States that have no marriage license law.

After informal suggestions, the act was reported in the following form:

AN ACT

Providing for return of marriage statistics.

Section 1. Be it enacted, &c., That the Marriage License Clerk (or other designated official) of each county, on or before the first day of February of each year, shall return to the Secretary of the State Board of Health (or other designated State official), upon suitable blank forms, to be provided by the State, an abridged statement of all marriage licenses issued by him during the preceding calendar year, specifying in each case—

1. Record number and date of the license.
2. Full names of the husband and wife.
3. The color of each party.
4. The age of each party.
5. The occupation of each party.
6. Date of marriage.
7. Place of marriage.
8. By whom the ceremony was performed.
9. Number of former marriages or divorces.
10. Names of parents or guardians where either party is under age.
11. Residence of parties.

For such returns each clerk shall receive the following fees (each State to fix its own fees), and upon neglect or refusal to make such returns, such clerk shall, for each such neglect or refusal, forfeit and pay the sum of $100 for the use of the proper county.

And the Secretary of the State Board of Health (or other designated State official) shall annually prepare, from said returns, abstracts and tabular statements of the facts relating to marriage in each county, and embody them, with the necessary analysis, in his annual report to the State."

Duly seconded, and the roll of the States having been called, the Secretary reported 19 States voting aye, and no State no; whereupon the Chair declared the act adopted.

WALTER GEORGE SMITH, Pennsylvania: I now present, on behalf of the Committee, the last act, to which we invite your attention and move its adoption. But in fairness to a distinguished gentleman, who is a member of the Committee, who was not present at its deliberations and who is not here now, I feel bound to raise the objection that he raised to me; and that was that this was adding a criminal statute, and he had some doubts as to its constitutionality; his argument being that it was an obviously legitimate thing for an officer of the court to practice his profession and to indicate to the public by signs, circulars or otherwise that that was his profession, yet that might be interpreted as being a solicitation within the meaning of this act. He did not have time to elaborate his reasons, but those were suggested, and I feel that frankness requires me to make that statement. It is a fact, however, that an act similar to this is on the statute books of a number of States.

JOHN C. RICHBERG, Illinois: And has been upheld as constitutional.

The motion to adopt the reported act was thereupon seconded, and the act read as follows:

AN ACT

Prohibiting solicitation in divorce cases, and prescribing penalties therefor.

Section 1. Be it enacted, &c., That any attorney, or other person who shall, within this State, by advertisement, circular or otherwise, solicit any case in divorce, or offer to procure or obtain, or to aid in procuring or obtaining divorces, or offer to engage or appear, or act as attorney, counsel or referee in any suit for divorce, either in this State or elsewhere, in any manner whatsoever, shall be guilty of a misdemeanor, and upon conviction thereof shall be sentenced to pay a fine of not more than one thousand dollars, or be imprisoned for not more than one year, or both.

TALCOTT H. RUSSELL, Connecticut: It seems to me that for the first time I find myself in opposition to the Committee. I think this legislation is too drastic. I think it makes an indelicacy a crime. As construed in some of the States, it might be all right; but if the Committee or Commissioners from Connecticut present it, and it comes up to the judiciary committee of the Legislature, it will be met with this suggestion—you make it a crime where a man has

a friend who wants a divorce to go and ask that person for permission to bring that divorce suit. That is solicitation, but it is not criminal, and it is not improper. It seems to me, with all due respect, it is in the nature of doctrinaire legislation. I do not like to present an act to our Legislature that will apparently bear a construction so absurd as that.

JOHN C. RICHBERG, Illinois: Let me ask the gentleman to explain; does he think that any court would construe the example cited as solicitation under this act?

TALCOTT H. RUSSELL, Connecticut: I do not know what the court would do; but I know that fairly understood that is solicitation, if you have a friend or relative that wants a divorce, and you ask his permission to bring that case. In terms, that is solicitation. Now the court might say, "It is too absurd a conclusion for any reasonable man to think the Legislature possibly meant that." But the plain import of the language of the proposed act just means that, and you ought not to be in a position where you must rely upon a court by construction to remove that, or to construe it as meaning something else. You had better have your statute in such language that it can be enforced. Better use plain language, and say what you mean.

PERCY WERNER, Missouri: I think that there is a loud demand for something of this sort. I also think that the offense borders so closely on what the common law denominates common barratry that the chances are the constitutionality of this act would be upheld, although I confess it may be near the border line. For that reason, I am in favor of the act.

The Secretary then proceeded to call the roll, and, when Maine was reached, Mr. Libby said:

"I was a member of the Committee, and I shall vote to sustain the act, but I doubt somewhat its wisdom."

ADOLPH SLOMAN, Michigan: I prefer not to vote.

VICE-CHANCELLOR EMERY, New Jersey: I think this language is too drastic. If I, as a member of the Committee, agreed on this, you will have to say it was not in a lucid interval. This has to be changed. It says, "If he offer to engage or appear or act as counsel." There is a large class of cases in which application is made to the Chancellor or Vice-Chancellor for counsel, because the people are obliged to sue in forma pauperis, and to say that a young man who should say to the court," "If there are any cases in which you are obliged to assign counsel, I offer to appear; I would like to get a little practice in this kind of cases," I do not know but that

might get him into trouble. I am afraid the language of the statute is a little too broad. I think the idea is right, but I must confess these terms are too broad; I fear the act is too fine in that form. New Jersey votes no.

REV. CAROLINE BARTLETT CRANE, Michigan: I rise to a question of information. Is the drafting of this act in response to anything that was contemplated in the resolutions passed at Washington?

WALTER GEORGE SMITH, Pennsylvania? No.

REV. CAROLINE BARTLETT CRANE, Michigan: It would occur to me that we should follow our instructions, and we may well desist from forming a penal code.

TALCOTT H. RUSSELL, Connecticut: I rise to a point of order; the motion to adopt this act is out of order, as not being within the terms of the appointment of the Committee.

JOHN C. RICHBERG, Illinois: I rise to another point of order, that the gentleman is out of order because he is interrupting the roll call.

The VICE-PRESIDENT: The Chair rules that point of order is taken too late.

TALCOTT H. RUSSELL, Connecticut: Permit me to say a word now: Does this Committee want to send out to the world, and to all the States, an act of this sort by a bare majority, and one which many members of the Committee, and some of the most eminent members, say is an improper act? Do you not give it a black eye at the very start?

WALTER GEORGE SMITH, Pennsylvania: As Chairman of the Committee on Resolutions, I ask unanimous consent to withdraw the proposed statute.

PRESIDENT WARREN, South Dakota: I would be glad to have the Vice-Chancellor put an act of this sort in proper shape.

WALTER GEORGE SMITH, Pennsylvania: There will be no trouble about it, because attention has been drawn to the subject, and each Legislature will pass an act improving or reforming its procedure on this subject, so that there will really be no difficulty about the matter. No harm will be done by withdrawing the act now, and some harm might be done by sending it out in view of the doubts that have been expressed, or by defeating it and giving the impression to the public at large that we are not in favor of legis-

lation of this sort so far as the same were practicable. Therefore, if there be no objection, I will withdraw the act on the part of the Committee.

The VICE-PRESIDENT: The Chair hearing no objections understands that the act is withdrawn, and the action taken is negatived.

WALTER GEORGE SMITH, Pennsylvania: There is no further work emanating from the Committee on Resolutions remaining to be considered by the Congress, but that there may be no doubt at all as to whether the Committee's work has been finished; there are some small matters of detail which I hope the Congress will be willing to leave to those charged with the duty of making the final draft of this act, to use such discretion as they may have with regard to its division into articles and titles, following always, however, the text of the sections.

The VICE-PRESIDENT: The Chair understood that there was a resolution of that kind to be offered.

WALTER GEORGE SMITH, Pennsylvania: I think a statement to that effect has been made, and it was so understood, but I simply want to get it on the record, that so far as the arrangement of this act is concerned, the Committee on Resolutions, in finally sending it to the Governors of the States in print, should have discretion to take such action as in their judgment seems wise with regard to chapters or titles of the sections, not the subject matter. My impression is that the act will go out as sections 1, 2, 3, 4 and so on, to the very end, without any subtitles; but I cannot say that with any degree of certainty. We must adopt some one form, and it will be different from the form in a number of the States. The States will probably divide the act in accordance with the custom there prevailing. I do not make any motion; I simply state that is what the Committee will do, unless this Congress makes objection now.

The VICE-PRESIDENT: It may be so understood, but the Chair would inquire whether, when the act is put in its final form, it will go to the Governors through the delegates of each State, or direct from this Committee on Resolutions

WALTER GEORGE SMITH, Pennsylvania: Both.

TALCOTT H. RUSSELL, Connecticut: It seems to me it ought to go from the Committee, and by the Committee be submitted to the Governors. The Commissioners from the various States would probably report this action to their respective Governors, but if you send an unauthorized circular or pamphlet, they naturally will not pay any attention to it unless it is submitted through the proper Commissioners.

WALTER GEORGE SMITH, Pennsylvania: The Committee will ask the Commissioners of the States to report this to their Governors; but in some instances the Commissioners have not attended with great regularity the sessions of this Congress, and they might not be impressed with the importance of the matter, and therefore if the delegate from Connecticut would feel that it was no violation of etiquette, we would send the act to him with the request that he present our statement and our act to his Governor and Legislature.

TALCOTT H. RUSSELL, Connecticut: I withdraw the suggestion.

The SECRETARY: I would call attention to the fact that, in addition to the names of the delegates from each State we also have on the roll the name of the Governor of each State; and in sending any printed matter to a delegate we have always sent the same printed matter to the Governor of the State, simply with a view of keeping him informed. In Pennsylvania, the delegates include the Governor, who was made a delegate by the Act of Assembly under which this Congress, I may say, had its birth, because it was the authorization given by that act to the Governor of Pennsylvania to invite the Governors of other States that called this body into being. Now, we have always felt that any Governor who would appear with his delegates would be a properly accredited representative to this Congress, and we have always sent each Governor a copy of all printed matter.

While I am on my feet, I would like to say to the delegates that we have here a number of copies of the proceedings at Washington, and any of the delegates desiring additional copies can have them furnished here. We will of course retain a number of these copies, so that they will be available in doing the work before the respective State Legislatures; if they are needed by the Committees in each State they can be obtained on application so long as the edition lasts.

In addition to that, I think without any resolution to that effect, it ought to be considered that each State delegation continues its existence, and is the immediate representative of the Congress in each State in furthering the work towards the adoption of this uniform divorce law.

CHARLES F. LIBBY, Maine: I would like to ask for information. How many copies of the act and the accompanying statement by the Committee on Resolutions are likely to be sent to each delegation for the purpose of distribution in the Legislature, or among the newspapers of the State? I think perhaps the Secretary could give us some information.

The SECRETARY: I would state that we sent to each delegate three copies of the proceedings. Now, we did not send additional copies, because we thought possibly a number of copies would be

required for use at the meeting of the Congress; and I may also say that we are compelled to take into consideration the subject of expense. As the delegates know, all expenses of printing—I refer to that with some reluctance—all the expenses of printing and postage, and everything in connection with the work of the Congress, have thus far been paid out of the Pennsylvania appropriation; and we have to keep our eyes on the appropriation so that we do not have an excess of expenditure over the amount appropriated. I may say we are on the safe side of the account, and we would like to hear from the delegates—in fact, if we could have a vote of the Congress as to the number of copies they would desire of the amended act and the proceedings of this session of the Congress, we would feel that so far as we are able to we would be guided by such vote.

JOHN C. RICHBERG, Illinois: I would like to suggest that, so far as the proceedings are concerned, they might be limited to three copies to each delegate, as that would seem to answer every purpose, but when it comes to the question of the statute of that of course we ought to have more copies, because we want to introduce it into the General Assembly, and we must have sufficient copies to do so.

The SECRETARY: Am I right or wrong in saying that you would not require more than two copies for that purpose; because, after the act is introduced into the Legislature, would it not be printed and go before the appropriate Committee in the usual form?

JOHN C. RICHBERG, Illinois: That is just exactly what I wanted to suggest, that we would require two copies, and one to the Governor, and then we want to retain one or two copies in the office, and also possibly copies for the general law libraries and public libraries, historical societies; I think half a dozen copies to each member would be about the proper number.

CHARLES THADDEUS TERRY, New York: I move the following resolution:

"Whereas, His Excellency, Governor Pennypacker, of Pennsylvania, has rendered a signal service to all the people of the Commonwealths which we respectively represent, in planning and carrying to a successful conclusion the promulgation of a code designed to secure uniformity in the laws governing divorce, and

"Whereas, His Excellency and the very able Commissioners from the State of Pennsylvania have guided and aided the deliberations of this Divorce Congress with untiring devotion, unremitting energy and the profoundest wisdom, and

"Whereas, The Committee on Resolutions has earned the genuine admiration and respect of the delegates to this Congress by its thorough and exhaustive labors, and its unquestioned ability, now therefore

"Be it resolved by the Representatives of the various States here assembled, That our heartiest gratitude and our warmest congratulations be accorded His Excellency, Governor Pennypacker, the Pennsylvania Commissioners and the Committee on Resolutions."

Duly seconded, and unanimously adopted.

PRESIDENT WARREN, South Dakota: If I may be allowed a single question, is it in the thought of any here that the Congress will go on and attempt to accomplish anything in the field of marriage and license law? That point has been made with reference to foreign decrees that it was the scandal of being divorced in one place, and not in another; and it still is a scandal in this country that parties are married in one State, and not married in another; and it is still the scandal of indiscreet haste in entering into the marriage relation. The laws in many States are utterly inadequate in regard to entrance into the bond of matrimony.

WALTER GEORGE SMITH, Pennsylvania: I would remind my friend that at the meeting in Washington the subject was considered, and it was decided that a motion covering somewhat the thought of the member who preceded me, introduced by our friend, Rev. Dr. Minton, of New Jersey, was not germane to the work of the Congress, although we sympathize very strongly with the purpose in view. I think, if my memory serves me right, the subject was referred to a body entirely competent to deal with it, to wit, the Commission on Uniform State Laws. The subject of uniform marriage laws would come properly before the Commission on Uniform Laws. That is a permanent body constituted just as this is, by appointment of delegates of different States by the Governors of such States, but with added authority in all of them appointed by an act of the Legislature.

The VICE-PRESIDENT: The Chair would rule that the subject is out of order, much as he regrets to do so; but the Chairman of the Committee on Resolutions has correctly expressed the situation; the feeling of the Congress was that that matter was beyond our power to enter into.

REV. DR. SAMUEL W. DIKE, Massachusetts: I rise to ask the question, whether, when this Congress adjourns, we adjourn sine die, or adjourn to the call of the Pennsylvania delegation?

The VICE-PRESIDENT: The Chair would say that our work is accomplished; we have no right to continue any longer here, and when we adjourn to-day, we adjourn sine die. Before calling upon Bishop Doane to address us, I wish to add a word in congratulation on the success of our work and the completion of our labors. We have served long and faithfully, and have now, after much work of which no trace appears on the part of the Committee on Resolutions, reached the end of our labors, and I ask the Rev. Bishop Doane to address us.

ADDRESS

By Right Reverend William C. Doane, D. D., Bishop of Albany.

It is very kind of you to offer me this opportunity. I confess this morning, just at the close of the session, I was extremely stirred and moved, if you desire, to make some definite and forcible statement with reference to a matter which I believe to be of the gravest importance, to which I am very much afraid there is all reason to believe there is a very great misapprehension, namely, the attitude of this Congress on the question of the causes for divorce either a vinculo or a mensa. You may have seen yourselves in the newspapers which reported the action of yesterday this is the one thing they took up; that the Conference had said that such and such were causes for divorce. When we were in Washington, the one thing that impressed me most satisfactorily about the conclusion of the Congress was that in dealing with that question on causes they made that splendid saving clause, "The Congress desiring to see the number of causes reduced rather than increased, recommends that no additional causes should be recognized in any State; and in those States where causes are restricted, no change is called for." Yet this morning, my own State of New York, was called upon in a very positive and formal way to follow the example of the majority of other States increasing the number of causes for which divorce should be granted from the bonds of matrimony.

I am more than satisfied, I am more than thankful for the strong, clear, conservative position that this Congress has taken in regard to the whole question of procedure, which, after all, is a thing which the lawyers and judges and the Bar and the Legislature are chiefly concerned with. But I do not want the members of this Conference to feel, and I want the people of the United States of America to feel that we have got something else to reckon with besides lawyers and bars, judges and Legislatures on this great question of the legitimate and proper causes of divorce. The great Christian sentiment if this country where it has the opportunity of voicing itself has spoken in tones which are increasing in distinctness and definite-

ness and positiveness day by day. That great body of the church which we call the Roman Catholic Church knows no divorce. The church in which I have the honor of being a minister recognizes only the one single point, which is the possible allusion in a question of the holy gospel according to St. Matthew as a cause for divorce from the bonds of matrimony. The Methodist Episcopal Church takes the same position that we do. The great Presbyterian Church, with is strong positive and conservative teaching, allows only two causes, adultery and desertion, and the desertion intensified by length of time and severity of condition. Therefore, I am perfectly clear that it will not do for a Conference that is to carry with it, as I believe, an enormous influence in the country, to run up against the strong and increasing Christian conviction of the churches and the Christian society of the land. There are three great hopes to my mind about the clearing of the atmosphere in this disgraceful condition of things with which America has been disgraced within the last few years; one is the civil power, the other is the strong religious utterance of the churches, and the third is that to which after all we must look, I think, for the most important influence, namely, the Christian conviction of the Christian people uttering itself in whatever way it may. So that I feel constrained simply to say this, since you give me the courtesy of the moment to say it in, that I sincerely hope that in the address which I understand the Committee is expected to prepare and send out with this code, specific emphasis be laid upon two facts; first, that the causes specified for divorce in the section of this code either from the bonds of matrimony or from bed and board are merely put there because they are existing causes known to the Legislatures of different States; and, in the next place, to call special and emphatic attention to the fact that the Conference in Philadelphia agrees with the Conference in Washington, in urging that where there are few causes they shall not be increased, and where there are many, they should be reduced in number.

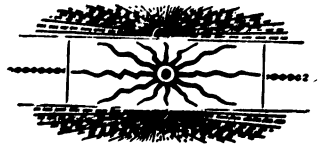
I am very grateful for the courtesy of the moment's speech; I am sorry at this late hour to take up the time of the Conference by any words of mine.

C. LA RUE MUNSON, Pennsylvania: I move that this Congress do now adjourn sine die, with the Benediction by the Rt. Rev. Bishop Doane, of Albany.

Duly seconded, and agreed to.

BENEDICTION BY BISHOP DOANE.

Under God's gracious mercy and protection we have come here. The Lord bless you and keep you. The Lord make his face to shine upon you and be gracious unto you. The Lord lift up his countenance upon you and give you peace, both now and forevermore.



INDEX.

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